

**STANDARD GENERATOR INTERCONNECTION AND OPERATING
AGREEMENT**

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STANDARD GENERATOR INTERCONNECTION AND OPERATING AGREEMENT

THIS STANDARD GENERATOR INTERCONNECTION AND OPERATING AGREEMENT ("Agreement") is made and entered into this ____ day of _____, 20__, by and between _____, a _____ organized and existing under the laws of the State/Commonwealth of _____ ("Generator"), and _____, a [corporation] organized and existing under the laws of the State/Commonwealth of _____ ("Transmission Provider and/or Transmission Owner"). Generator and Transmission Provider each may be referred to as a "Party" or collectively as the "Parties."

RECITALS

WHEREAS, Transmission Provider operates the Transmission System; and

WHEREAS, Generator intends to own, lease and/or control and operate the Facility identified in Appendix C; and,

WHEREAS, Generator and Transmission Provider have agreed to enter into this Agreement for the purpose of interconnecting the Facility with the Transmission System;

NOW, THEREFORE, in consideration of and subject to the mutual covenants contained herein, it is agreed:

ARTICLE 1. DEFINITIONS

When used in this Agreement with initial capitalization, the following terms shall have the meanings specified or referred to in this Article 1. Terms used in this Agreement with initial capitalization that are not defined in this Article 1 shall have the meanings specified in the section in which it is used or as specified in the Transmission Provider Tariff, as may be amended from time to time.

- 1.1 **“Affiliate”** shall mean, with respect to a corporation, partnership or other entity, each such other corporation, partnership or other entity that directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with, such corporation, partnership or other entity.
- 1.2 **“Agreement”** shall mean this Standard Generator Interconnection and Operating Agreement.
- 1.3 **“Ancillary and Other Services”** shall have the same meaning as defined in the Transmission Provider’s Tariff, as may be amended from time to time, and shall in addition include such other services as Generator Balancing, Blackstart, Automatic Generation Control, and Capacity.
- 1.4 **“Applicable Laws and Regulations”** shall mean all duly promulgated applicable federal, state and local laws, regulations, rules, ordinances, codes, decrees, judgments, directives, or judicial or administrative orders, permits and other duly authorized actions of any Governmental Authority.
- 1.5 **“Applicable Reliability Council”** shall mean the reliability council(s) applicable to the Transmission System to which the Facility is directly interconnected.
- 1.6 **“Applicable Standards”** shall mean the requirements and guidelines of NERC, the Applicable Reliability Council, the Control Area of the Transmission System to which the Facility is directly interconnected and the Transmission Provider Interconnection Guidelines.
- 1.7 **“Breach”** shall mean the failure of a Party to perform or observe any material term or condition of this Agreement.
- 1.8 **“Breaching Party”** shall mean a Party that is in Breach of this Agreement.
- 1.9 **“Commercial Operation Date”** shall mean the date on which Generator commences commercial operation of a unit at the Facility after Trial Operation of such unit has been completed as confirmed in writing substantially in the form shown in Appendix F.
- 1.10 **“Confidential Information”** shall have the meaning set forth in Article 22.1.
- 1.11 **“Control Area”** shall mean an electrical system or systems, as certified by NERC or the applicable regional reliability council, as the case may be, and bounded by interconnection metering and telemetry, to which a common automatic generation control scheme is applied in order to (i) match, at all times, power output of the generator(s) within the electrical system and capacity and

energy purchased from or sold to entities outside the electrical system to load within the electrical system; (ii) maintain scheduled interchange with other Control Areas within the limits of Good Utility Practice; (iii) maintain the frequency of the electrical system within reasonable limits in accordance with Good Utility Practice; and (iv) provide sufficient generating capacity and operating reserves in accordance with Good Utility Practice.

- 1.12 **“Default”** shall mean the failure of a Breaching Party to cure its Breach in accordance with Article 20.
- 1.13 **“Effective Date”** shall mean the date on which this Agreement becomes effective in accordance with Article 2.1.
- 1.14 **“Emergency Condition”** shall have the meaning set forth in Article 14.1.
- 1.15 **“Energy Resource Interconnection Service”** shall have the meaning set forth in Article 4.1.1.
- 1.16 **“Environmental Law”** shall mean Applicable Laws or Regulations relating to pollution or protection of the environment or natural resources.
- 1.17 **“Facility”** shall mean Generator’s or Transmission Provider/Transmission Owner’s electric generating facility, but shall not include the Generator Interconnection Facilities.
- 1.18 **“Facilities Study”** shall mean the Interconnection Facilities Study conducted by the Transmission Provider under the Interconnection Procedures.
- 1.19 **“Federal Power Act”** shall mean the Federal Power Act, as amended, 16 U.S.C. §§ 791a *et seq.*
- 1.20 **“FERC”** shall mean the Federal Energy Regulatory Commission or its successor.
- 1.21 **“Force Majeure”** shall have the meaning set forth in Article 16.1.
- 1.22 **“Generator”** as used herein applies to any Facility regardless of ownership.
- 1.23 **“Generator Interconnection Facilities”** shall mean all facilities and equipment, as identified in Appendix A, which are located between the Facility and the Point of Change of Ownership, including any modification, addition, or upgrades to such facilities and equipment necessary to physically and electrically connect to Facility to the Transmission System. Generator Interconnection Facilities are sole use facilities and shall not include Network Upgrades or facilities.
- 1.24 **“Good Utility Practice”** shall mean any of the practices, methods and acts engaged in or approved by a significant portion of the electric industry during the relevant time period, or any of the practices, methods and acts which, in the exercise of reasonable judgment in light of the facts known at the time the decision was made, could have been expected to accomplish the desired result at a reasonable cost consistent with good business practices, reliability, safety and expedition. Good Utility Practice is not intended to be limited to the optimum practice, method, or act to the exclusion of all others, but rather to be acceptable

practices, methods, or acts generally accepted in the region. Good Utility Practice shall include, but not be limited to, compliance with Applicable Laws and Regulations, Applicable Standards, the National Electric Safety Code, and the National Electrical Code, as they may be amended from time to time, including the criteria, rules and standards of any successor organizations.

- 1.25 “Governmental Authority”** shall mean any federal, state, local or other governmental regulatory or administrative agency, court, commission, department, board, or other governmental subdivision, legislature, rulemaking board, tribunal, or other governmental authority having jurisdiction over the Parties, their respective facilities, or the respective services they provide, and exercising or entitled to exercise any administrative, executive, police, or taxing authority or power; provided, however, that such term does not include Generator, Transmission Provider, or any Affiliate thereof.
- 1.26 “Hazardous Substances”** shall mean any chemicals, materials or substances defined as or included in the definition of “hazardous substances,” “hazardous wastes,” “hazardous materials,” “hazardous constituents,” “restricted hazardous materials,” “extremely hazardous substances,” “toxic substances,” “radioactive substances,” “contaminants,” “pollutants,” “toxic pollutants” or words of similar meaning and regulatory effect under any applicable Environmental Law, or any other chemical, material or substance, exposure to which is prohibited, limited or regulated by any applicable Environmental Law.
- 1.27 “In-Service Date”** shall mean the date upon which the Generator reasonably expects it will be ready to begin use of the Transmission Provider Interconnection Facilities to obtain back feed power and upon which it reasonably expects to begin doing so.
- 1.28 “Independent System Operator” (“ISO”)** shall mean any Independent System Operator to which a transmission provider has transferred operational control of its transmission facilities, or any portion thereof, within the meaning of Order No. 888.
- 1.29 “Interconnection Facilities”** shall mean the Transmission Provider's Interconnection Facilities and the Generator Interconnection Facilities. Collectively, all facilities and equipment between the Facility and the Point of Interconnection, including any modification, additions or upgrades that are necessary to physically and electrically interconnect the Facility to the Transmission System. Interconnection Facilities are sole use facilities and shall not include Network upgrades or facilities.
- 1.30 “Interconnection Guidelines”** shall mean the technical requirements set forth in Appendix G.

- 1.31 “Interconnection Request”** shall mean a request, the form of Appendix 1 to the Standard Generator Interconnection Procedures, in accordance with the OATT, to interconnect a new Facility, or to increase the capacity or make a Material Modification to the operations characteristics of an existing Facility that is interconnected with the Transmission System.
- 1.32 “Interconnection Service”** shall mean those services associated with interconnecting a Facility to the Transmission System as such services are set forth in Article 4 of this Agreement.
- 1.33 “Initial Synchronization Date”** shall mean the date upon which the Facility is initially synchronized and upon which Trial Operation begins.
- 1.34 “IRS”** shall mean the Internal Revenue Service.
- 1.35 “Joint Operating Committee”** shall be comprised of the members of the individual Operating Committees. The role of this Committee is to address on a generic level any issues arising out of the duties, roles and responsibilities of the individual Operating Committees as described in Article 29. The Joint Operating Committee shall meet as necessary, but not less than once each calendar year to carry out those duties. Unless otherwise agreed to, the annual meeting will be held on the first Monday in June of each year.
- 1.36 “Loss”** shall have the meaning set forth in Article 18.1.
- 1.37 “Metering Equipment”** shall mean all metering equipment described in, and installed at the metering points designated in, Appendix C.
- 1.38 “NERC”** shall mean the North American Electric Reliability Council or its successor agency assuming or charged with similar responsibilities related to the operation and reliability of the North American interconnected electric transmission grid.
- 1.39 “Network Resource Interconnection Service”** shall have the meaning set forth in Article 4.1.2.
- 1.40 “Network Upgrades”** shall mean the additions, modifications, and upgrades to the Transmission System required beyond the point at which the generator interconnects to the Transmission System to accommodate the interconnection of the Facility to the Transmission System as identified in Appendix A, including any modifications, additions or upgrades made to such facilities. The facilities and equipment are used by and benefit all users of the transmission grid, without distinction or regard as to the purpose of the upgrade (e.g., to relieve overloads, to remedy stability and short circuit problems, to maintain reliability, or to provide protection and service restoration) including the fact that these facilities and equipment are being replaced or upgraded to accommodate the interconnection request.
- 1.41 “Non-Breaching Party”** shall mean a Party that is not in Breach of this Agreement with regard to a specific event of Breach by another Party.
- 1.42 “Notice of Dispute”** shall have the meaning set forth in Article 27.1.

- 1.43 “Operating Committee”** shall mean the Operating Committee as described in Article 29.
- 1.44 “Party” or “Parties”** shall have the meaning set forth in the introductory paragraph of this Agreement.
- 1.45 “Point of Change of Ownership”** shall mean the point, set forth in Appendix A, at which the Generator Interconnection Facilities connect to the Transmission Provider's Transmission Interconnection Facilities.
- 1.46 “Point of Interconnection”** shall mean the point, set forth in Appendix A, where the Interconnection Facilities connect to the Transmission Provider's Transmission Interconnection System.
- 1.47 “Reasonable Efforts”** shall mean, with respect to an action required to be attempted or taken by a Party under this Agreement, efforts that are timely and consistent with Good Utility Practice and are otherwise substantially equivalent to those a Party would use to protect its own interests.
- 1.48 “RTO/ISO”** shall mean any Regional Transmission Organization or Independent System Operator to which a Transmission Provider has transferred operational control of its transmission facilities, or any portion thereof, within the meaning of Order No. 2000.
- 1.49 “Switching and Tagging Rules”** shall mean the switching and tagging procedures of Transmission Provider, and Generator, as they may be amended from time to time.
- 1.50 “System Protection Facilities”** shall be described in Appendix A, and shall mean the equipment required to protect (i) the Transmission System from faults or other electrical disturbances occurring at the Facility, and (ii) the Facility from faults or other electrical system disturbances occurring on the Transmission System or on other delivery systems and/or other generating systems to which the Transmission System is directly connected.
- 1.51 “Tariff”** shall mean the Transmission Provider tariff for which open access transmission service over, and transmission interconnection to the Transmission System is offered, as filed with FERC, and as amended or supplemented from time to time, or any successor tariff.
- 1.52 “Transmission Owner”** shall mean an entity that owns, leases or otherwise possesses interest in the portion of the Transmission System at the Point of Interconnection may be a party to this Agreement to the extent necessary.
- 1.53 “Transmission Provider”** shall mean the entity that provides Transmission Service under its Open Access Transmission Tariff.
- 1.54 “Transmission Provider Interconnection Facilities”** shall mean all facilities owned and/or controlled or operated by the Transmission Provider from the Point of Change of Ownership to the Point of Interconnection as identified in Appendix A, including any modifications, additions or upgrades to such facilities and equipment. Transmission Provider Interconnection Facilities are sole use

facilities and shall not include Network Upgrades or facilities as defined in Article 1.39 above.

- 1.55 “Transmission System”** shall mean the facilities owned, controlled or operated by the Transmission Provider that are used to provide transmission service under the Tariff, including any additions, modifications or upgrades made to such facilities.
- 1.56 “Trial Operation”** shall mean the period during which Generator is engaged in on-site test operations and commissioning of the Facility prior to commercial operation.

ARTICLE 2. EFFECTIVE DATE, TERM AND TERMINATION

2.1 Effective Date. This Agreement shall become effective upon execution by the Parties subject to acceptance by FERC (if applicable), or if filed unexecuted, upon the date specified by FERC. Transmission Provider shall promptly file this Agreement with FERC upon execution in accordance with Article 3.1.

2.2 Term of Agreement. Subject to the provisions of Article 2.3, this Agreement shall remain in effect for a period of ten (10) years from the Effective Date or such other longer period as the Generator may request (*Term to be Specified in Individual Agreements*) and shall be automatically renewed for each successive one-year period thereafter.

2.3 Termination Procedures. This Agreement may be terminated as follows:

2.3.1 Written Notice. The Generator may terminate this Agreement after giving the Transmission Provider thirty (30) Calendar Days advance written notice; or

2.3.2 No Commercial Operation. The Transmission Provider may terminate this Agreement on written notice to the Generator if (i) the Generator's Facility has not achieved commercial operation within five (5) years after the scheduled Commercial Operation Date reflected in Appendix B, Time Schedule, or (ii) fails to be available for operation for a consecutive period of five (5) years unless major Facility upgrades are in progress.

2.3.3 Default. Either Party may terminate this Agreement in accordance with Article 17.

Notwithstanding the foregoing, no termination shall become effective until the Parties have complied with all Applicable Laws and Regulations applicable to such termination, including the filing with FERC of a notice of termination of this Agreement, which notice has been accepted for filing by FERC.

2.4 Termination Costs. If a Party elects to terminate the Agreement pursuant to Article 2.3 above, each Party shall pay all costs incurred (including any cancellation costs relating to orders or contracts for interconnection facilities and equipment) or charges assessed by the other Party, as of the date of the other Party's receipt of such notice of termination, that are the responsibility of the Terminating Party under this Agreement. In the event of termination by either Party, both Parties shall use commercially Reasonable Efforts to mitigate the costs, damages and charges arising as a consequence of termination. Upon termination of this Agreement, unless otherwise ordered or approved by FERC:

2.4.1 With respect to any portion of the Transmission Provider Interconnection Facilities that have not yet been constructed or installed, the Transmission Provider shall to the extent possible and with Generator's authorization cancel any pending orders of, or return, any materials or equipment for, or contracts for construction

of, such facilities; provided that in the event Generator elects not to authorize such cancellation, Generator shall assume all payment obligations with respect to such materials, equipment, and contracts, and the Transmission Provider shall deliver such material and equipment, and, if necessary, assign such contracts, to Generator as soon as practicable, at Generator's expense. To the extent that Generator has already paid Transmission Provider for any or all such costs of materials or equipment not taken by Generator, Transmission Provider shall promptly refund such amounts to Generator, less any costs, including penalties incurred by the Transmission Provider to cancel any pending orders of or return such materials, equipment, or contracts.

2.4.2 Transmission Provider may, at its option, retain any portion of such materials, equipment, or facilities that Generator chooses not to accept delivery of, in which case Transmission Provider shall be responsible for all costs associated with procuring such materials, equipment, or facilities.

2.4.3 With respect to any portion of the Interconnection Facilities, and any other facilities already installed or constructed pursuant to the terms of this Agreement, Generator shall be responsible for all costs associated with the removal, relocation or other disposition or retirement of such materials, equipment, or facilities.

2.5 Disconnection. Upon termination of this Agreement, the Parties will take all appropriate steps to disconnect the Facility from the Transmission System. All costs required to effectuate such disconnection shall be borne by the terminating Party, unless such termination resulted from the non-terminating Party's Default of this Agreement or such non-terminating Party otherwise is responsible for these costs under this Agreement.

2.6 Survival. This Agreement shall continue in effect after termination to the extent necessary to provide for final billings and payments and for costs incurred hereunder, including billings and payments pursuant to this Agreement; to permit the determination and enforcement of liability and indemnification obligations arising from acts or events that occurred while this Agreement was in effect; and to permit each Party to have access to the lands of the other Party pursuant to this Agreement or other applicable agreements, to disconnect, remove or salvage its own facilities and equipment.

2.7 Reservation of Rights. Notwithstanding any other provision in this Agreement, each Party retains its rights to unilaterally seek modification of this Agreement pursuant to Sections 205 and 206 of the Federal Power Act and pursuant to FERC's rules and regulations promulgated thereunder.

ARTICLE 3. REGULATORY FILINGS

- 3.1 Filing.** The Transmission Provider shall file this Agreement (and any amendment hereto) with the appropriate Governmental Authority, if required. Any information related to studies for interconnection asserted by Generator to contain competitively sensitive commercial or financial information shall be maintained by the Transmission Provider and identified as “confidential” under seal stating that Generator asserts such information is Confidential Information and has requested such information be kept under seal. If requested by the Transmission Provider, Generator shall provide the Transmission Provider, in writing, with the Generator’s basis for asserting that the information referred to in this Article 3.1 is competitively sensitive information, and the Transmission Provider may disclose such writing to the appropriate Governmental Authority. Generator shall be responsible for the costs associated with affording confidential treatment of such information. If the Generator has executed this Agreement, or any amendment thereto, the Generator shall reasonably cooperate with Transmission Provider with respect to such filing and to provide any information reasonably requested by Transmission Provider needed to comply with applicable regulatory requirements. If the Generator has executed this Agreement or any amendment thereto, unless the Parties agree otherwise, Generator shall not protest the filing of this Agreement or any amendment which Generator executed.

ARTICLE 4. SCOPE OF SERVICE

4.1 Interconnection Product Options. Generator has selected the following (checked) type of Interconnection Service:

4.1.1 Energy Resource Interconnection Service.

4.1.1.1 The Product. Energy Resource (“ER”) Interconnection Service allows Generator to connect the Facility to the Transmission System and be eligible to deliver the Facility’s output using the existing firm or non-firm capacity of the Transmission System on an “as available” basis. To the extent Generator wants to receive ER Interconnection Service, the Transmission Provider shall construct facilities consistent with the studies identified in Attachment A. ER Interconnection Service does not in and of itself convey any transmission delivery service.

4.1.1.2 The Study. The study consists of short circuit/fault duty, steady state (thermal and voltage) and stability analyses. The short circuit/fault duty analysis would identify direct interconnection facilities required and the Network Upgrades necessary to address short circuit issues associated with the interconnection facilities. The stability and steady state studies would identify necessary upgrades to allow full output of the proposed Facility and would also identify the maximum allowed output, at the time the study is performed, of the interconnecting Facility without requiring additional Network Upgrades.

4.1.1.3 Delivery Service Implications. Under ER Interconnection Service, the interconnected Generator will be able to inject power from the Facility into and deliver power across the interconnecting Transmission Provider’s Transmission System on an “as available” basis up to the amount of MW’s identified in the applicable stability and steady state studies to the extent the upgrades initially required to qualify for ER Interconnection Service have been constructed. Where eligible to do so (e.g., PJM, ISO-NE, NYISO), the interconnected Generator may place a bid to sell into the market up to the maximum identified Facility output, subject to any conditions specified in the interconnection service approval, and the Facility will be dispatched to the extent the Generator’s bid clears. In all other instances, no transmission delivery service from the Facility is assured, but the Generator may obtain point-to-point transmission delivery service or be used for secondary network transmission service, pursuant to the Transmission Provider’s Open Access Transmission Tariff (“OATT”), up to the maximum output identified in the stability and steady state studies. In those instances, in order for the Generator

to obtain the right to deliver or inject energy beyond the Facility Point of Interconnection or to improve its ability to do so, transmission delivery service must be obtained pursuant to the provisions of the Transmission Provider's OATT. The Generator's ability to inject its Facility output beyond the Point of Interconnection, therefore, will depend on the existing capacity of the Transmission Provider's Transmission System at such time as a transmission service request is made that would accommodate such delivery.

4.1.2 Network Resource Interconnection Service.

4.1.2.1 The Product. The Transmission Provider must conduct the necessary studies and construct the Network Upgrades needed to integrate the Facility (1) in a manner comparable to that in which the Transmission Provider integrates its generating facilities to serve native load customers; or (2) in an ISO or RTO with market based congestion management, in the same manner as all other Network Resources. Network Resource ("NR") Interconnection Service in and of itself does not convey any transmission delivery service.

4.1.2.2 The Study. The interconnection study for NR Interconnection Service shall assure that the Generator's Facility meets the requirements for ER Interconnection Service and as a general matter, that such Facility interconnection is also studied with the Transmission Provider's Transmission System at peak load, under a variety of severely stressed conditions, to determine whether, with the Generator Facility at full output, the aggregate of generation in the local area can be delivered to the aggregate of load on the Transmission Provider's Transmission System, consistent with the Transmission Provider's reliability criteria and procedures. This approach assumes that some portion of existing Network Resources are displaced by the output of the Generator's Facility. The Generator may request the studies associated with NR Interconnection Service at the time of its interconnection application, together with its request(s) for study of other levels of interconnection service, and, following the completion of the requested facilities studies and subject to the construction of all necessary upgrades, may elect to proceed with NR Interconnection Service or to proceed under a lower level of interconnection service to the extent that only certain upgrades will be completed.

There is no requirement either at the time of study or interconnection, or at any point in the future, that the Generator's Facility be designated as a Network Resource by a network transmission customer or that the Generator identify a specific buyer (or sink). To the extent a Network Generator does designate the Facility as a Network

Resource, it must do so pursuant to the Transmission Provider's OATT.

4.1.2.3

Delivery Service Implications. NR Interconnection Service allows the Generator's Facility to be designated by any Network Generator on the Transmission Provider's Transmission System as a Network Resource, up to the Facility's full output, on the same basis as all other existing Network Resources interconnected to the Transmission Provider's Transmission System, and to be studied as a Network Resource on the assumption that such a designation will occur. Any Network Generator can utilize its network service to obtain delivery of energy from the interconnected Generator's Facility in the same manner as it accesses other Network Resources. A Facility receiving NR Interconnection Service may also be used to provide ancillary services after technical studies and/or periodic analyses are performed with respect to the Facility's ability to provide any applicable ancillary service, provided that such studies and analyses have been or would be required in connection with the provision of such ancillary services by any existing Network Resource. In addition, in the event of transmission constraints on the Transmission Provider's Transmission System, the Generator's Facility shall be subject to the applicable congestion management procedures in the Transmission Provider's Transmission System in the same manner as all other Network Resources.

Once a Generator satisfies the requirements for obtaining NR Interconnection Service, any future transmission service request for delivery from the Facility within the Transmission Provider's Transmission System of any amount of capacity and/or energy, up to the amount initially studied, will not require that any additional studies be performed or that any further upgrades associated with such Facility be undertaken, regardless of whether or not such Facility is ever designated by a Network Generator as a Network Resource and regardless of changes in ownership of the Facility. To the extent the Generator enters into an arrangement for long term transmission service for deliveries from the Facility outside the Transmission Provider's Transmission System, such request may require additional studies and upgrades in order for the Transmission Provider to grant such request.

Depending on how the cost allocation issue is resolved, the Generator may be allocated congestion rights based on the construction of upgrades.

4.2 Provision of Service. Transmission Provider shall provide Interconnection Service for the Facility at the Point of Interconnection.

4.3 Generator Balancing Service Arrangements. Generator must demonstrate, to the Transmission Provider's reasonable satisfaction, that it has satisfied the requirements of this Article 4.3 prior to the submission of any schedules for delivery service to such Transmission Provider identifying the Facility as the Point of Receipt for such scheduled delivery.

4.3.1 Generator is responsible for ensuring that its actual Facility output matches the scheduled delivery from the Facility, on an integrated clock hour basis, to the Transmission Provider's Transmission System, including ramping into and out of such scheduled delivery, as measured at the Point of Interconnection. Generator shall arrange for the supply of energy when there is a difference between the actual Facility output and the scheduled delivery from the Facility (the "Generator Balancing Service"). Generator may satisfy its obligation for making such Generator Balancing Service arrangements by: (a) obtaining such service from another entity that (i) has generating resources deliverable within the applicable Control Area, (ii) agrees to assume responsibility for providing such Generator Balancing Service to the Generator, and (iii) has appropriate coordination service arrangements or agreements with the applicable Control Area that addresses Generator Balancing Service for all generating resources for which the entity is responsible within the applicable Control Area; (b) committing sufficient additional unscheduled generating resources to the control of and dispatch by the applicable Control Area operator that are capable of supplying energy not supplied by the Generator's scheduled Facility, and entering into an appropriate coordination services agreement with the applicable Control Area that addresses Generator Balancing Service obligations for the Facility; (c) entering into an arrangement with another Control Area to dynamically schedule the Generator's Facility out of the applicable Control Area and into such other Control Area; (d) entering into a Generator Balancing Service arrangement with the applicable Control Area; or (e) in the event the load/generation balancing function of the applicable Control Area is accomplished through the function of its market structures approved by FERC, by entering into an arrangement consistent with such FERC-approved market structure. In the event Generator fails to demonstrate to the Transmission Provider that it has otherwise complied with this Article, the Generator shall be deemed to have elected to enter into a Generator Balancing Service arrangement with the applicable Control Area. Nothing in this provision shall prejudice either Party from obtaining a FERC-approved tariff addressing its obligations and rights with respect to Generator Balancing Service.

4.4 Performance Standards. Each Party shall perform all of its obligations under this Agreement in accordance with Applicable Laws and Regulations, Applicable Standards, and Good Utility Practice, and to the extent a Party is required or prevented or limited in taking any action by such regulations and standards, such

Party shall not be deemed to be in breach of this Agreement for its compliance therewith.

4.5 No Transmission Delivery Service. The execution of this Agreement does not constitute a request for nor the provision of any transmission delivery service under the Transmission Provider's Tariff or any local distribution service.

4.6 Generator Provided Services. The services provided by Generator under this Agreement are set forth in Article 9.6 and Article 14.5.1. Generator shall be paid for such services in accordance with Article 11.6.

ARTICLE 5. INTERCONNECTION FACILITIES ENGINEERING, PROCUREMENT, AND CONSTRUCTION

- 5.1 Options.** Unless otherwise mutually agreed to between the Parties, Generator shall select the In-Service Date, Initial Synchronization Date, and Commercial Operation Date; and one of the options set forth below (subparagraph A or subparagraph B) for completion of the Transmission Provider Interconnection Facilities/Network Upgrades and such dates and selected option shall be set forth in Appendix B, Time Schedule. The dates selected by Generator shall be dates upon which Generator reasonably expects it will be ready to begin use of the Transmission Provider Interconnection Facilities/Network Upgrades.
- A. The Transmission Provider shall design, procure, and construct the Transmission Provider Interconnection Facilities/Network Upgrades, using Reasonable Efforts to complete the Transmission Provider Interconnection Facilities/Network Upgrades by the dates set forth in Appendix B, Time Schedule. The Transmission Provider shall not be required to undertake any action which is inconsistent with its standard safety practices, its material and equipment specifications, its design criteria and construction procedures, its labor agreements, and Applicable Laws and Regulations. In the event the Transmission Provider reasonably expects that it will not be able to complete the Transmission Provider Interconnection Facilities/Network Upgrades by the specified dates, the Transmission Provider will promptly provide written notice to the Generator and will undertake Reasonable Efforts to meet the earliest dates thereafter.
- B. (i) The Transmission Provider shall design, procure, and construct the Transmission Provider Interconnection Facilities/Network Upgrades by the dates reflected in Appendix B, Time Schedule, pursuant to subparagraph 5.1.B(i)(a) or subparagraph 5.1.B(i)(b) as applicable.
- (a) If the dates designated by Generator are acceptable to Transmission Provider, the Transmission Provider shall so notify Generator within thirty (30) Calendar Days, and shall assume responsibility for the design, procurement and construction of the Transmission Provider Interconnection Facilities/Network Upgrades by the designated dates. If Transmission Provider subsequently fails to complete Transmission Provider Interconnection Facilities by the In-Service Date, to the extent necessary to provide backfeed service, or fails to complete Network Upgrades by the Initial Synchronization Date to the extent necessary to allow for Trial Operation at full power output, unless other arrangements are made by the Parties for such Trial Operation, or fails to complete the Network Upgrades by the Commercial Operation Date, as such dates are reflected in Appendix B, Time Schedule, Transmission Provider shall pay the Generator liquidated damages in accordance with this subparagraph 5.1.B; provided, however, the dates designated by Generator shall be extended day for day for each day that the applicable ISO refuses to grant clearances to install equipment.

- (b) If the dates designated by Generator are not acceptable to Transmission Provider, the Transmission Provider shall notify the Generator within thirty (30) Calendar Days, and, unless the Parties agree otherwise, Generator shall have the option to assume responsibility for the design, procurement and construction of: (1) the Transmission Provider Interconnection Facilities, if Transmission Provider has notified Generator that the dates designated by Generator associated therewith are not acceptable, or (2) stand-alone Network Upgrade projects specified in Appendix A, Interconnection Facilities and Network Upgrades, if Transmission Provider has notified Generator that the dates designated by Generator associated therewith are not acceptable. If the Generator elects not to exercise its option to assume such responsibility, Generator shall so notify Transmission Provider within thirty (30) Calendar Days, and the Parties shall in good faith attempt to negotiate terms and conditions (including revision of the specified dates and/or liquidated damages, the provision of incentives or the procurement and construction of a portion of the Transmission Provider Interconnection Facilities/Network Upgrades by Generator) pursuant to which Transmission Provider is willing to assume responsibility for the design, procurement and construction of the Transmission Provider Interconnection Facilities/Network Upgrades pursuant to subparagraph 5.1.B(i)(a), above. If the Parties are unable to reach agreement on such terms and conditions, Transmission Provider shall assume responsibility for the design, procurement and construction of the Transmission Provider Interconnection Facilities/Network Upgrades pursuant to the terms of subparagraph 5.1 A.
- (ii) The Parties agree that actual damages to the Generator, in the event the TIF/NU are not completed by the dates designated by the Generator and accepted by the Transmission Provider pursuant to subparagraph 5.1.B(i)(a), above, may include Generator's fixed operation and maintenance costs and lost opportunity costs. Such actual damages are uncertain and impossible to determine at this time. The Parties agree that, because of such uncertainty, any liquidated damages paid by the Transmission Provider to the Generator shall be an amount equal to $\frac{1}{2}$ of 1% per day of the actual cost of the Transmission Provider Interconnection Facilities/Network Upgrades, in the aggregate, for which the Transmission Provider has design, procurement, and construction responsibility, in the event that Transmission Provider does not complete any portion of the Transmission Provider Interconnection Facilities/Network Upgrades by the applicable dates, per day. However, in no event shall the total liquidated damages exceed 20% of the actual cost of the Transmission Provider Interconnection Facilities/Network Upgrades for which Transmission Provider has assumed responsibility to design, procure and construct. The

Parties agree that the foregoing payments will be made by the Transmission Provider to the Generator as just compensation for the damages caused to the Generator, which actual damages are uncertain and impossible to determine at this time, and as reasonable liquidated damages, but not as a penalty or a method to secure performance of this Agreement.

- (iii) No liquidated damages shall be paid to Generator if: (1) the Generator is not ready to commence use of the Transmission Provider Interconnection Facilities/Network Upgrades for the delivery of power to the Facility for Trial Operation or export of power from the Facility on the specified dates, unless the Generator would have been able to commence use of the Transmission Provider Interconnection Facilities/Network Upgrades for the delivery of power to the Facility for Trial Operation or export of power from the Facility but for Transmission Provider's delay; (2) the Transmission Provider's failure to meet the specified dates is the result of the action or inaction of the Generator; (3) the Generator has assumed responsibility for the design, procurement and construction of the Transmission Provider Interconnection Facilities/Network Upgrades or has elected not to assume such responsibility pursuant to subparagraph 5.1 B. (i) (b), above, unless the Parties agree otherwise pursuant to Subparagraph 5.1 B. (i) (b); or (4) the Parties have otherwise agreed.
- (iv) If Generator has assumed responsibility for the design, procurement and construction of the Transmission Provider Interconnection Facilities/Network Upgrades pursuant to Subparagraph 5.1.B(i)(b): 1) the Generator shall engineer, procure equipment, and construct the Transmission Provider Interconnection Facilities/Network Upgrades (or portions thereof) using Good Utility Practice and using standards and specifications provided in advance by the Transmission Provider; 2) Generator's engineering, procurement and construction of the Transmission Provider Interconnection Facilities/Network Upgrades shall comply with all requirements of law to which Transmission Provider would be subject in the engineering, procurement or construction of the Transmission Provider Interconnection Facilities/Network Upgrades; 3) Transmission Provider shall review and approve the engineering design, acceptance tests of equipment, and the construction of the Transmission Provider Interconnection Facilities/Network Upgrades; 4) Transmission Provider shall approve and accept for operation the Transmission Provider Interconnection Facilities/Network Upgrades to the extent engineered, procured, and constructed in accordance with this Subparagraph 5.1.B.v; 5) Should any phase of the engineering, equipment procurement, or construction of the Transmission Provider Interconnection Facilities/Network Upgrades, including selection of subcontractors, not meet the standards and specifications provided by Transmission Provider, and therefore not be approved and accepted for operation, then Generator shall be obligated to remedy deficiencies in that portion of the Transmission

Provider Interconnection Facilities/Network Upgrades.

- 5.2 Power System Stabilizers.** The Generator shall procure, install, maintain and operate power system stabilizers, if and as required the System Impact Study. Transmission Provider reserves the right to reasonably establish minimal acceptable settings for any installed power system stabilizers, subject to the design and operating limitations of the Facility.
- 5.3 Equipment Procurement.** If responsibility for construction of the Transmission Provider Interconnection Facilities/Network Upgrades is to be borne by the Transmission Provider, then the Transmission Provider shall commence design of the Transmission Provider Interconnection Facilities/Network Upgrades and procure necessary equipment as soon as practicable after all of the following conditions are satisfied, unless the Parties otherwise agree in writing:
- 5.3.1** The Transmission Provider has completed the Facilities Study pursuant to the Facilities Study Agreement;
 - 5.3.2** The Transmission Provider has received written authorization to proceed with design and procurement from the Generator by the date specified in Appendix B, Time Schedule; and
 - 5.3.3** The Generator has provided security to the Transmission Provider in accordance with Article 11.5 by the dates specified in Appendix B, Time Schedule.
- 5.4 Construction Commencement.** The Transmission Provider shall commence construction of the Transmission Provider Interconnection Facilities/Network Upgrades for which it is responsible as soon as practicable after the following additional conditions are satisfied:
- 5.4.1** Approval of the appropriate Governmental Authority has been obtained for any facilities requiring regulatory approval;
 - 5.4.2** Necessary real property rights and rights-of-way have been obtained, to the extent required for the construction of a discrete aspect of the Transmission Provider Interconnection Facilities/Network Upgrades;
 - 5.4.3** The Transmission Provider has received written authorization to proceed with construction from the Generator by the date specified in Appendix B, Time Schedule; and
 - 5.4.4** The Generator has provided security to the Transmission Provider in accordance with Article 11.5 by the dates specified in Appendix B, Time Schedule.
- 5.5 Work Progress.** The Parties will keep each other advised periodically as to the progress of their respective design, procurement and construction efforts. Either Party may, at any time, request a progress report from the other Party. If, at any time, the Generator determines that the completion of the Transmission Provider Interconnection Facilities will not be required until after the specified In-Service

Date, the Generator will provide written notice to the Transmission Provider of such later date upon which the completion of the Transmission Provider Interconnection Facilities will be required.

5.6 Information Exchange. As soon as reasonably practicable after the Effective Date, the Parties shall exchange information regarding the design and compatibility of the Parties' Interconnection Facilities and compatibility of the Interconnection Facilities with the Transmission Provider's Transmission System, and shall work diligently and in good faith to make any necessary design changes.

5.7 Limited Operation. If any of the Transmission Provider Interconnection Facilities/Network Upgrades are not reasonably expected to be completed prior to the Commercial Operation Date of the Facility, Transmission Provider shall, upon the request and at the expense of Generator, perform operating studies on a timely basis to determine the extent to which the Facility and the Generator Interconnection Facilities may operate prior to the completion of the Transmission Provider Interconnection Facilities/Network Upgrades consistent with Applicable Laws and Regulations, Applicable Standards, Good Utility Practice, and this Agreement. Transmission Provider shall permit Generator to operate the Facility and the Generator Interconnection Facilities in accordance with the results of such studies.

5.8 Generator Interconnection Facilities ("GIF"). Generator shall, at its expense, design, procure, construct, own and install the GIF, as set forth in Appendix A, Interconnection Facilities and Network Upgrades.

5.8.1 Generator Specifications. Generator shall submit final specifications for the GIF, including System Protection Facilities, to Transmission Provider for review and comment at least ninety (90) Calendar Days prior to the Initial Synchronization Date. Transmission Provider shall review such specifications to ensure that the GIF are compatible with the technical specifications, operational control, and safety requirements of the Transmission Provider and comment on such specifications within thirty (30) Calendar Days of Generator's submission. All specifications provided hereunder shall be deemed confidential.

5.8.2 Transmission Provider's Review. Transmission Provider's review of Generator's final specifications shall not be construed as confirming, endorsing, or providing a warranty as to the design, fitness, safety, durability or reliability of the Facility, or the GIF. Generator shall make such changes to the GIF as may reasonably be required [by Transmission Provider] to ensure that the GIF are compatible with the telemetry, communications, and safety requirements of the Transmission Provider.

5.8.3 GIF Construction. The GIF shall be designed and constructed in accordance with Good Utility Practice. Within one hundred twenty (120) Calendar Days after the Commercial Operation Date, unless the Parties agree on another mutually acceptable deadline, the Generator shall deliver to the Transmission Provider the following

“as-built” drawings, information and documents for the GIF: a one-line diagram, a site plan showing the Facility and the GIF, plan and elevation drawings showing the layout of the GIF, a relay functional diagram, relaying AC and DC schematic wiring diagrams and relay settings for all facilities associated with the Generator’s step-up transformers, the facilities connecting the Generator to the step-up transformers and the GIF, and the impedances (determined by factory tests) for the associated step-up transformers and the generators.

- 5.9 Transmission Provider Interconnection Facilities Construction.** The Transmission Provider Interconnection Facilities shall be designed and constructed in accordance with Good Utility Practice. Upon request, within one hundred twenty (120) Calendar Days after the Commercial Operation Date, unless the Parties agree on another mutually acceptable deadline, the Transmission Provider shall deliver to the Generator the following “as-built” drawings, information and documents for the Transmission Provider Interconnection Facilities: [include appropriate drawings and relay diagrams]
- 5.10 Access Rights.** Upon reasonable notice and supervision by a Party, and subject to any required or necessary regulatory approvals, a Party (“Granting Party”) shall furnish [*at no cost*] to the other Party (“Access Party”) any rights of use, licenses, rights of way and easements with respect to lands owned or controlled by the Granting Party and its agents that are necessary to enable the Access Party to obtain ingress and egress to construct, operate, maintain, repair, test (or witness testing), inspect, replace or remove facilities and equipment to: (i) interconnect the Facility with the Transmission System; (ii) operate and maintain the Facility, the Interconnection Facilities and the Transmission System; and (iii) disconnect or remove the Access Party’s facilities and equipment upon termination of this Agreement. In exercising such licenses, rights of way and easements, the Access Party shall not unreasonably disrupt or interfere with normal operation of the Granting Party’s business and shall adhere to the safety rules and procedures established in advance, as may be changed from time to time, by the Granting Party and provided to the Access Party.
- 5.11 Lands of Other Property Owners.** If any part of the Transmission Provider/Transmission Owner Interconnection Facilities and/or Network Upgrades is to be installed on property owned by persons other than Generator or Transmission Provider/Transmission Owner, the Transmission Provider/Transmission Owner shall at Generator’s expense use reasonable efforts to procure from such persons any rights of use, licenses, rights of way and easements that are necessary to construct, operate, maintain, test, inspect, replace or remove the Transmission Provider/Transmission Owner Interconnection Facilities and/or Network Upgrades upon such property. Provided, however, where such property is owned by an affiliate of Transmission Provider/Transmission Owner, Generator’s expense for such procured property right shall be limited to the fair market value of the procured property right or such other price as required by applicable inter-affiliate transaction requirements. The Transmission Provider/Transmission Owner shall use its eminent domain authority to facilitate the exercise of the Parties’ rights and obligations under this Agreement, where and to the extent that it is permitted to do so.

5.12 Early Construction of Base Case Facilities. Generator may request Transmission Provider to construct, and Transmission Provider shall construct, on a schedule that will accommodate Generator's In-Service Date, all or any portion of any Network Upgrades required for Generator to be interconnected to the Transmission System which are included in the base case of the Facilities Study for the Generator, and which also are required to be constructed for another interconnecting generator, but where such construction is not scheduled to be completed in time to achieve Generator's In-Service Date.

5.13 Suspension. Generator reserves the right, upon written notice to Transmission Provider, to suspend at any time all work by Transmission Provider associated with the construction and installation of Transmission Provider Interconnection Facilities and/or Network Upgrades required under this Agreement. In such event, Generator shall be responsible for all reasonable and necessary costs which Transmission Provider (i) has incurred pursuant to this Agreement prior to the suspension and (ii) incurs in suspending such work, including any costs incurred to perform such work as may be necessary to ensure the safety of persons and property and the integrity of the Transmission System during such suspension and, if applicable, any costs incurred in connection with the cancellation or suspension of material, equipment and labor contracts which Transmission Provider cannot reasonably avoid; provided, however, that prior to canceling or suspending any such material, equipment or labor contract, Transmission Provider shall obtain Generator's authorization to do so. Transmission Provider shall invoice Generator for such costs pursuant to Article 12 and shall use due diligence to minimize its costs. In the event Generator suspends work by Transmission Provider required under this Agreement pursuant to this Article 5.13, and has not requested Transmission Provider to recommence the work required under this Agreement on or before the expiration of three (3) years following commencement of such suspension, this Agreement shall be deemed terminated.

5.14 Taxes.

5.14.1 Generator Payments Not Taxable. The Parties intend that all payments or property transfers made by Generator to Transmission Provider for the installation of the Transmission Provider Interconnection Facilities and the Network Upgrades shall be non-taxable, either as contributions to capital, or as an advance, in accordance with the Internal Revenue Code and any applicable state income tax laws and shall not be taxable as contributions in aid of construction or otherwise under the Internal Revenue Code and any applicable state income tax laws.

5.14.2 Representations And Covenants. In accordance with IRS Notice 2001-82 and IRS Notice 88-129, Generator represents and covenants that (i) ownership of the electricity generated at the Facility will pass to another party prior to the transmission of the electricity on the Transmission System, (ii) for income tax purposes, the amount of any payments and the cost of any property transferred to the Transmission Provider for the Transmission Provider Interconnection Facilities will be capitalized by Generator as an intangible asset and recovered using the straight-line method

over a useful life of twenty (20) years, and (iii) any portion of the Transmission Provider Interconnection Facilities that is a “dual-use intertie,” within the meaning of IRS Notice 88-129, is reasonably expected to carry only a de minimis amount of electricity in the direction of the Facility. For this purpose, “de minimis amount” means no more than 5% of the total power flows in both directions, calculated in accordance with the “5% test” set forth in IRS Notice 88-129. At Transmission Provider’s request, Generator shall provide Transmission Provider with a report from an independent engineer confirming its representation in clause (iii), above. Transmission Provider represents and covenants that the cost of the Transmission Provider Interconnection Facilities paid for by Generator will have no net effect on the base upon which rates are determined.

5.14.3

Indemnification for Taxes Imposed Upon Transmission

Provider. Notwithstanding Article 5.14.1, Generator shall protect, indemnify and hold harmless Transmission Provider from income taxes imposed against Transmission Provider as the result of payments or property transfers made by Generator to Transmission Provider under this Agreement, as well as any interest and penalties, other than interest and penalties attributable to any delay caused by Transmission Provider. Transmission Provider shall not include a gross-up for income taxes in the amounts it charges Generator under this Agreement unless (i) Transmission Provider has determined, in good faith, that the payments or property transfers made by Generator to Transmission Provider should be reported as income subject to taxation or (ii) any Governmental Authority directs Transmission Provider to report payments or property as income subject to taxation; provided, however, that Transmission Provider may require Generator to provide security, in a form reasonably acceptable to Transmission Provider (such as a parental guarantee or a letter of credit), in an amount equal to Generator’s estimated tax liability under this Article 5.14. Generator shall reimburse Transmission Provider for such taxes on a fully grossed-up basis, in accordance with Article 5.14.4, within thirty (30) Calendar Days of receiving written notification from Transmission Provider of the amount due, including detail about how the amount was calculated.

5.14.4

Tax Gross-Up Amount. Generator’s liability for taxes under this Article 5.14 shall be calculated on a fully grossed-up basis. Except as may otherwise be agreed to by the parties, this means that Generator will pay Transmission Provider, in addition to the amount paid for the Interconnection Facilities and Network Upgrades, an amount equal to (1) the current taxes imposed on Transmission Provider (“Current Taxes”) on the excess of (a) the gross income realized by Transmission Provider as a result of payments or property transfers made by Generator to Transmission Provider under this Agreement (without regard to any payments under this Article 5.14) (the “Gross Income Amount”) over (b) the present value of future tax deductions for depreciation that will be available

as a result of such payments or property transfers (the “Present Value Depreciation Amount”), plus (2) an additional amount sufficient to permit the Transmission Provider to receive and retain, after the payment of all Current Taxes, an amount equal to the net amount described in clause (1). For this purpose, (i) Current Taxes shall be computed based on Transmission Provider’s composite federal and state tax rates at the time the payments or property transfers are received and Transmission Provider will be treated as being subject to tax at the highest marginal rates in effect at that time (the “Current Tax Rate”), and (ii) the Present Value Depreciation Amount shall be computed by discounting Transmission Provider’s anticipated tax depreciation deductions as a result of such payments or property transfers by Transmission Provider’s current weighted average cost of capital. Thus, the formula for calculating Generator’s liability to Transmission Owner pursuant to this Article 5.14.4 can be expressed as follows:
$$\frac{(\text{Current Tax Rate} \times (\text{Gross Income Amount} - \text{Present Value of Tax Depreciation}))}{(1 - \text{Current Tax Rate})}$$
 Generator’s estimated tax liability in the event taxes are imposed shall be stated in Appendix A, Interconnection Facilities and Network Upgrades.

5.14.5 Private Letter Ruling or Change or Clarification of Law. At Generator’s request and expense, Transmission Provider shall file with the IRS a request for a private letter ruling as to whether any property transferred or sums paid, or to be paid, by Generator to Transmission Provider under this Agreement are subject to federal income taxation. Generator will prepare the initial draft of the request for a private letter ruling, and will certify under penalties of perjury that all facts represented in such request are true and accurate to the best of Generator’s knowledge. Transmission Provider and Generator shall cooperate in good faith with respect to the submission of such request. Transmission Provider shall keep Generator fully informed of the status of such request for a private letter ruling and shall execute either a privacy act waiver or a limited power of attorney, in a form acceptable to the IRS, that authorizes Generator to participate in all discussions with the IRS regarding such request for a private letter ruling. Transmission Provider shall allow Generator to attend all meetings with IRS officials about the request and shall permit Generator to prepare the initial drafts of any follow-up letters in connection with the request. If the private letter ruling concludes that such transfers or sums are not subject to federal income taxation, or a clarification of or change in law results in Transmission Provider determining in good faith that such transfers or sums are not subject to federal income taxation, Generator’s obligations under this Article 5.14 shall be reduced accordingly.

5.14.6 Contests. In the event any Governmental Authority determines that Transmission Provider’s receipt of payments or property constitutes income that is subject to taxation, Transmission Provider shall notify Generator, in writing, within thirty (30) Calendar Days of receiving notification of such determination by a

Governmental Authority. Upon the timely written request by Generator and at Generator's sole expense, Transmission Provider shall appeal, protest, seek abatement of, or otherwise oppose such determination. Upon Generator's written request and sole expense, Transmission Provider shall file a claim for refund with respect to any taxes paid under this Article 5.14, whether or not it has received such a determination. Transmission Provider reserves the right to make all decisions with regard to the prosecution of such appeal, protest, abatement or other contest, including the selection of counsel and compromise or settlement of the claim, but Transmission Provider shall keep Generator informed, shall consider in good faith suggestions from Generator about the conduct of the contest, and shall reasonably permit Generator or a Generator representative to attend contest proceedings. Generator shall pay to Transmission Provider on a periodic basis, as invoiced by Transmission Provider, Transmission Provider's documented reasonable costs of prosecuting such appeal, protest, abatement or other contest. Transmission Provider will not be required to appeal or seek further review beyond one level of judicial review. At any time during the contest, Transmission Provider may agree to a settlement either with Generator's consent or after obtaining written advice from nationally-recognized tax counsel, selected by Transmission Provider, but reasonably acceptable to Generator, that the proposed settlement represents a reasonable settlement given the hazards of litigation. Generator's obligation shall be based on the amount of the settlement agreed to by Generator, or if a higher amount, so much of the settlement that is supported by the written advice from nationally-recognized tax counsel selected under the terms of the preceding sentence. Any settlement without Generator's consent or such written advice will relieve Generator from any obligation to indemnify Transmission Provider for the tax at issue in the contest.

5.14.7 Refund. In the event that (a) a private letter ruling is issued to Transmission Provider which holds that any amount paid or the value of any property transferred by Generator to Transmission Provider under the terms of this Agreement is not subject to federal income taxation, (b) any legislative change or administrative announcement, notice, ruling or other determination makes it reasonably clear to Transmission Provider in good faith that any amount paid or the value of any property transferred by Generator to Transmission Provider under the terms of this Agreement is not taxable to Transmission Provider, (c) any abatement, appeal, protest, or other contest results in a determination that any payments or transfers made by Generator to Transmission Provider are not subject to federal income tax, or (d) if Transmission Provider receives a refund from any taxing authority for any overpayment of tax attributable to any payment or property transfer made by Generator to Transmission Provider pursuant to this Agreement, Transmission Provider shall promptly refund to Generator the following: (i) any payment made by Generator under

this Article 5.14 for taxes that is attributable to the amount determined to be non-taxable, together with interest thereon (ii) on any amounts paid by Generator to Transmission Provider for such taxes which Transmission Provider did not submit to the taxing authority, calculated in accordance with the methodology set forth in FERC's regulations at 18 C.F.R. §35.19a(a)(2)(ii) from the date payment was made by Generator to the date Transmission Provider refunds such payment to Generator, and (iii) with respect to any such taxes paid by Transmission Provider, any refund or credit Transmission Provider receives or to which it may be entitled from any Governmental Authority, interest (or that portion thereof attributable to the payment described in clause (i), above) owed to the Transmission Provider for such overpayment of taxes (including any reduction in interest otherwise payable by Transmission Provider to any Governmental Authority resulting from an offset or credit); provided, however, that Transmission Provider will remit such amount promptly to Generator only after and to the extent that Transmission Provider has received a tax refund, credit or offset from any Governmental Authority for any applicable overpayment of income tax related to the Transmission Provider Interconnection Facilities. The intent of this provision is to leave both parties, to the extent practicable, in the event that no taxes are due with respect to any payment for Interconnection Facilities and Network Upgrades hereunder, in the same position they would have been in had no such tax payments been made.

□ **5.14.8**

Taxes Other Than Income Taxes. Upon the timely request by Generator, and at Generator's sole expense, Transmission Provider shall appeal, protest, seek abatement of, or otherwise contest any tax (other than federal or state income tax) asserted or assessed against Transmission Provider for which Generator may be required to reimburse Transmission Provider under the terms of this Agreement. Generator and Transmission Provider shall cooperate in good faith with respect to any such contest. Unless the payment of such taxes is a prerequisite to an appeal or abatement or cannot be deferred, no amount shall be payable by Generator to Transmission Provider for such taxes until they are assessed by a final, non-appealable order by any court or agency of competent jurisdiction. In the event that a tax payment is withheld and ultimately due and payable after appeal, Generator will be responsible for all taxes, interest and penalties, other than penalties attributable to any delay caused by Transmission Provider.

5.14.9

Transmission Owners Who Are Not Transmission Providers. If the Transmission Provider is not the same entity as the Transmission Owner, then (i) all references in this Article 5.14 to Transmission Provider shall be deemed also to refer to and to include the Transmission Owner, as appropriate, and (ii) this Agreement shall not become effective until such Transmission Owner shall have agreed in writing to assume all of the duties and obligations of the Transmission Provider under this Article 5.14 of

this Agreement.

5.15 Tax Status. Each Party shall cooperate with the other to maintain the other Party's tax status. Nothing in this Agreement is intended to adversely affect any Transmission Provider's tax exempt status with respect to the issuance of bonds including, but not limited to, Local Furnishing Bonds.

5.16 Modification.

5.16.1 General. Either Party may undertake modifications to its facilities. If a Party plans to undertake a modification that reasonably may be expected to affect the other Party's facilities, that Party shall provide to the other Party sufficient information regarding such modification so that the other Party may evaluate the potential impact of such modification prior to commencement of the work. Such information shall be deemed to be confidential hereunder and shall include information concerning the timing of such modifications and whether such modifications are expected to interrupt the flow of electricity from the Facility. The Party desiring to perform such work shall provide the relevant drawings, plans, and specifications to the other Party at least ninety (90) Calendar Days in advance of the commencement of the work or such shorter period upon which the Parties may agree, which agreement shall not unreasonably be withheld, conditioned or delayed. In the case of Generator modifications that do not require Generator to submit an Interconnection Request, Transmission Provider shall provide, within thirty (30) Calendar Days (or such other time as the Parties may agree), an estimate of any additional modifications to the Transmission System, Transmission Provider Interconnection Facilities or Network Upgrades necessitated by such Generator modification and a good faith estimate of the costs thereof.

5.16.2 Standards. Any additions, modifications, or replacements made to a Party's facilities shall be designed, constructed and operated in accordance with this Agreement, Good Utility Practice and the National Electric Safety Code in effect at the time.

5.16.3 Modification Costs. Generator shall not be responsible for the costs of any additions, modifications, or replacements that Transmission Provider makes to the Transmission Provider Interconnection Facilities or the Transmission System to facilitate the interconnection of a third party to the Transmission Provider Interconnection Facilities or the Transmission System, or to provide transmission service under the Transmission Provider Tariff. Generator shall be responsible for the costs of any additions, modifications, or replacements to the Generator Interconnection Facilities that may be necessary to maintain or upgrade such Generator Interconnection Facilities consistent with Applicable Laws and Regulations, Applicable Standards or Good Utility Practice.

ARTICLE 6. TESTING AND INSPECTION

- 6.1 Pre-Commercial Operation Date Testing and Modifications.** Prior to the Commercial Operation Date, the Transmission Provider shall test the Transmission Provider Interconnection Facilities and Network Upgrades and Generator shall test the Facility and the Generator Interconnection Facilities to ensure their safe and reliable operation. Similar testing may be required after initial operation. Each Party shall make any modifications to its facilities that are found to be necessary as a result of such testing. Generator shall bear the cost of all such testing and modifications. Generator shall generate test energy at the Facility only if it has arranged for the delivery of such test energy.
- 6.2 Post-Commercial Operation Date Testing and Modifications.** Each Party shall at its own expense perform routine inspection and testing of its facilities and equipment in accordance with Good Utility Practice as may be necessary to ensure the continued interconnection of the Facility with the Transmission System in a safe and reliable manner. Each Party shall have the right, upon advance written notice, to require reasonable additional testing of the other Party's facilities, at the requesting Party's expense, as may be in accordance with Good Utility Practice.
- 6.3 Right to Observe Testing.** Each Party shall notify the other Party in advance of its performance of tests of its Interconnection Facilities. The other Party has the right, at its own expense, to observe such testing.
- 6.4 Right to Inspect.** Each Party shall have the right, but shall have no obligation to: (i) observe the other Party's tests and/or inspection of any of its System Protection Facilities and other protective equipment, including power system stabilizers; (ii) review the settings of the other Party's System Protection Facilities and other protective equipment; and (iii) review the other Party's maintenance records relative to the Interconnection Facilities, the System Protection Facilities and other protective equipment. A Party may exercise these rights from time to time as it deems necessary upon reasonable notice to the other Party. The exercise or non-exercise by a Party of any such rights shall not be construed as an endorsement or confirmation of any element or condition of the Interconnection Facilities or the System Protection Facilities or other protective equipment or the operation thereof, or as a warranty as to the fitness, safety, desirability, or reliability of same. Any information that Transmission Provider obtains through the exercise of any of its rights under this Article 6.4 shall be deemed to be confidential hereunder.

ARTICLE 7. METERING

- 7.1 General.** Unless otherwise agreed by the Parties, Transmission Provider shall install Metering Equipment at the Point of Interconnection prior to any operation of the Facility and shall own, operate, test and maintain such Metering Equipment. Power flows to and from the Facility shall be measured at or, at Transmission Provider's option, compensated to, the Point of Interconnection. Transmission Provider shall provide metering quantities, in analog and/or digital form, to Generator upon request. Generator shall bear all reasonable documented costs associated with the purchase, installation, operation, testing and maintenance of the Metering Equipment.
- 7.2 Check Meters.** Generator, at its option and expense, may install and operate, on its premises and on its side of the Point of Interconnection, one or more check meters to check Transmission Provider's meters. Such check meters shall be for check purposes only and shall not be used for the measurement of power flows for purposes of this Agreement, except as provided in Article 7.3 below. The check meters shall be subject at all reasonable times to inspection and examination by Transmission Provider or its designee. The installation, operation and maintenance thereof, however, shall be performed entirely by Generator in accordance with Good Utility Practice.
- 7.3 Standards.** Transmission Provider shall install, calibrate, and test revenue quality Metering Equipment in accordance with applicable ANSI standards. To the extent this Article 7 conflicts with the manuals, standards or guidelines of the Applicable Reliability Council regarding interchange metering and transactions, the manuals, standards and guidelines of such Applicable Reliability Council shall control.
- 7.4 Testing of Metering Equipment.** Transmission Provider shall inspect and test all Transmission Provider-owned Metering Equipment upon installation and at least once every two (2) years thereafter. If requested to do so by Generator, Transmission Provider shall, at Generator's expense, inspect or test Metering Equipment more frequently than every two (2) years. Transmission Provider shall give reasonable notice of the time when any inspection or test shall take place, and Generator may have representatives present at the test or inspection. If at any time Metering Equipment is found to be inaccurate or defective, it shall be adjusted, repaired or replaced at Generator's expense, in order to provide accurate metering, unless the inaccuracy or defect is due to owner failure to maintain, then owner shall pay. If Metering Equipment fails to register, or if the measurement made by Metering Equipment during a test varies by more than [one percent] from the measurement made by the standard meter used in the test, Transmission Provider shall adjust the data by correcting all measurements made by the inaccurate meter for the period during which the inaccurate measurements were made, if the period can be determined. If the period cannot be determined, the adjustment shall be for the period immediately preceding the test of the Metering Equipment equal to one-half the time from the date of the last previous test of the Metering Equipment.

7.5 Metering Data. At Generator's expense, the metered data shall be telemetered to one or more locations designated by Transmission Provider and one or more locations designated by Generator. The metered data provided by Generator shall be used, under normal operating conditions, as the official measurement of the amount of energy delivered from the Facility to the Point of Interconnection.

ARTICLE 8. COMMUNICATIONS

8.1 Generator Obligations. Generator shall maintain satisfactory operating communications with Transmission Provider's system dispatcher or representative designated by Transmission Provider. Generator shall provide standard voice line, dedicated voice line and facsimile communications at its Facility control room or central dispatch facility through use of the public telephone system. Generator shall also provide the dedicated data circuit(s) necessary to provide Generator data to Transmission Provider as set forth in Appendix E, Security Arrangement Details. The data circuit(s) shall extend from the Facility to the location(s) specified by Transmission Provider. Any required maintenance of such communications equipment shall be performed by Generator. Operational communications shall be activated and maintained under, but not be limited to, the following events: system paralleling or separation, scheduled and unscheduled shutdowns, equipment clearances, and hourly and daily load data.

8.2 Remote Terminal Unit. Prior to any operation of the Facility, a Remote Terminal Unit, or equivalent data collection and transfer equipment acceptable to both Parties, shall be installed by Generator, or by Transmission Provider at Generator's expense, to gather accumulated and instantaneous data to be telemetered to the location(s) designated by Transmission Provider through use of a dedicated point-to-point data circuit(s) as indicated in Article 8.1. The communication protocol for the data circuit(s) shall be specified by Transmission Provider. Instantaneous bi-directional analog real power and reactive power flow information must be telemetered directly to the location(s) specified by Transmission Provider.

Each Party will promptly advise the other Party if it detects or otherwise learns of any metering, telemetry or communications equipment errors or malfunctions that require the attention and/or correction by the other Party. The Party owning such equipment shall correct such error or malfunction as soon as reasonably feasible.

8.3 No Annexation. Any and all equipment placed on the premises of a Party shall be and remain the property of the Party providing such equipment regardless of the mode and manner of annexation or attachment to real property, unless otherwise mutually agreed by the Parties.

ARTICLE 9. OPERATIONS

- 9.1 General.** Each Party shall comply with the Interconnection Guidelines set out in Appendix G, Interconnection Guidelines, to this Agreement. Each Party shall provide to the other Party all information that may reasonably be required by the other Party to comply with Applicable Laws and Regulations and Applicable Standards.
- 9.2 Control Area Notification.** At least three months before Initial Synchronization Date, the Generator shall notify the Transmission Provider in writing of the Control Area in which it will be located. After the Initial Synchronization Date, Generator has the right to designate a different Control Area. In either event, Transmission Provider shall use Reasonable Efforts to accommodate such request as soon as practicable, but shall do so no later than six months from the date the Generator provided notification. If the Generator elects to be located in a Control Area other than the Control Area in which the Transmission Provider is located, all necessary arrangements, including but not limited to those set forth in Article 7 and Article 8 of this Agreement, and remote control area generator interchange agreements, if applicable, and the appropriate measures under such agreements, shall be executed and implemented prior to the placement of the Facility in the other Control Area. The Parties will diligently cooperate with one another to enable such agreements and arrangements to be executed and implemented on a schedule necessary to meet the Generator's request "at Generator's expense". If the Facility is not operated as part of Transmission Provider's Control Area, in no event shall this Agreement prohibit, prevent, or otherwise limit the ability of Generator to operate the Facility in accordance with the requirements of the Control Area of which it is part, and the Parties shall negotiate in good faith to amend this Agreement as necessary or appropriate.
- 9.3 Transmission Provider Obligations.** Transmission Provider shall cause the Transmission System and the Transmission Provider Interconnection Facilities to be operated, maintained and controlled in a safe and reliable manner and in accordance with this Agreement. Transmission Provider may provide operating instructions to Generator consistent with this Agreement and Transmission Provider's operating protocols and procedures as they may change from time to time. Transmission Provider will consider changes to its operating protocols and procedures proposed by Generator. Generator shall not be obligated to follow Transmission Provider's instructions to the extent the instructions would have a material adverse impact on the safe and reliable operation of Generator's facilities. Upon request, Generator shall provide Transmission Provider with documentation of any such alleged material adverse impact.
- 9.4 Generator Obligations.** Generator shall at its own expense operate, maintain and control the Facility and the Generator Interconnection Facilities in a safe and reliable manner and in accordance with this Agreement. Generator shall operate the Facility and the Generation Interconnection Facilities in accordance with all applicable requirements of the Control Area of which it is part, as such requirements are set forth in Appendix C, Interconnection Details, of this

Agreement. Appendix C, Interconnection Details, will be modified to reflect changes to the requirements as they may change from time to time. Either Party may request that the other Party provide copies of the requirements set forth in Appendix C, Interconnection Details, of this Agreement.

9.5 Start-Up and Synchronization. Consistent with Transmission Provider Interconnection Guidelines and the Parties' mutually acceptable procedures, the Generator is responsible for the proper synchronization of the Facility to the Transmission Provider System.

9.6 Reactive Power.

9.6.1 Power Factor Design Criteria. Generator shall design the Facility to maintain a composite power delivery at continuous rated power output at the Point of Interconnection at a power factor within the range of 0.97 leading to 0.95 lagging, unless Transmission Provider has established different requirements that apply to all generators in the Control Area on a comparable basis.

9.6.2 Voltage Schedules. Once the Generator has synchronized the Facility with the Transmission System, Transmission Provider shall require Generator to operate the Facility to produce or absorb reactive power within the design limitations of the Facility set forth in Article 24 pursuant to voltage schedules, reactive power schedules or power factor schedules. Transmission Provider's schedules shall treat all sources of reactive power in the Control Area in an equitable and not unduly discriminatory manner. Transmission Provider shall exercise Reasonable Efforts to provide Generator with such schedules at least one (1) day in advance, and may make changes to such schedules as necessary to maintain the reliability of the Transmission System. Generator shall operate the Generating Facility to maintain the specified output voltage or power factor at the Point of Interconnection within the design limitations of the Facility set forth in Article 24. If Generator is unable to maintain the specified voltage or power factor, it shall promptly notify the System Operator.

9.6.2.1 Governors and Regulators. Whenever the Facility is operated in parallel with the Transmission System and the speed governors (if installed on the generating unit pursuant to Good Utility Practice) and voltage regulators are capable of operation, Generator shall operate the Facility with its speed governors and voltage regulators in automatic operation. If the Facility's speed governors and voltage regulators are not capable of such automatic operation, the Generator shall immediately notify Transmission Provider's system operator, or its designated representative, and ensure that such Facility's reactive power production or absorption (measured in MVARs) are within the design capability of the Facility's generating unit(s) and steady state stability limits. Generator shall not cause its Facility to disconnect automatically or instantaneously from the

Transmission System or trip any generating unit comprising the Facility for an under or over frequency condition unless the abnormal frequency condition persists for a time period beyond the limits set forth in ANSI/IEEE Standard C37.106, or such other standard as applied to other generators in the Control Area on a comparable basis.

- 9.6.3 Payment for Reactive Power.** Any obligation of Transmission Provider to pay Generator for reactive power that Generator provides or absorbs from the Facility shall be pursuant to Article 11.6 or such other agreement to which the Parties have otherwise agreed. To the extent that no rate schedule is in effect at the time the Generator is required to provide or absorb any Reactive Power under this Agreement, the Transmission Provider agrees to compensate the Generator in such amount as would have been due the Generator had the rate schedule been in effect at the time service commenced; provided, however, that such rate schedule must be filed at FERC or other appropriate Governmental Authority within sixty (60) Calendar Days of the commencement of service.]

9.7 Outages, Interruptions, and Disconnection.

9.7.1 Outages.

- 9.7.1.1 Outage Authority and Coordination.** Each Party may in accordance with Good Utility Practice in coordination with the other Party remove from service any of its respective Interconnection Facilities or Network Upgrades that may impact the other Party's facilities as necessary to perform maintenance or testing or to install or replace equipment. Absent an Emergency Condition, the Party scheduling a removal of such facility(ies) from service will use [Reasonable Efforts] to schedule such removal on a date and time mutually acceptable to both Parties. In all circumstances any Party planning to remove such facility(ies) from service shall use Reasonable Efforts to minimize the effect on the other Party of such removal.
- 9.7.1.2 Outage Schedules.** The Transmission Provider shall post scheduled outages of its transmission facilities on the OASIS. Generator shall submit its planned maintenance schedules for the Facility to Transmission Provider for a minimum of a rolling twenty-four month period. Generator shall update its planned maintenance schedules as necessary. Transmission Provider may request Generator to reschedule its maintenance as necessary to maintain the reliability of the Transmission System; provided, however, adequacy of generation supply shall not be a criterion in determining Transmission System reliability. Transmission Provider shall compensate Generator for any costs of rescheduling such maintenance.

- 9.7.1.3 Outage Restoration.** If an outage on a Party Interconnection Facilities or Network Upgrades adversely affects the other Party's facilities, the Party that owns or controls the facility that is out of service shall use Reasonable Efforts to promptly restore such facility(ies) to a normal operating condition consistent with the nature of the outage.
- 9.7.2 Continuity of Service.** If required by Good Utility Practice to do so, Transmission Provider may require Generator to curtail, interrupt or reduce deliveries of electricity if such delivery of electricity would adversely affect Transmission Provider's ability to perform such activities as are necessary to safely and reliably operate and maintain the Transmission System. The following provisions shall apply to any curtailment, interruption or reduction permitted under this Article 9.7.2:
- 9.7.2.1** The curtailment, interruption, or reduction shall continue only for so long as reasonably necessary under Good Utility Practice;
- 9.7.2.2** Any such curtailment, interruption, or reduction shall be made on an equitable, non-discriminatory basis with respect to all generators directly connected to the Transmission System;
- 9.7.2.3** When the curtailment, interruption, or reduction must be made under circumstances which do not allow for advance notice, Transmission Provider shall notify Generator by telephone as soon as practicable of the reasons for the curtailment, interruption, or reduction, and, if known, its expected duration. Telephone notification shall be followed by written notification as soon as practicable;
- 9.7.2.4** Except during the existence of an Emergency Condition, when the curtailment, interruption, or reduction can be scheduled, Transmission Provider shall notify Generator in advance regarding the timing of such scheduling and further notify Generator of the expected duration. Transmission Provider shall schedule the curtailment or interruption to coincide with the scheduled outages of the Facility, and if not possible, Transmission Provider shall use Good Utility Practices to schedule the curtailment or interruption during periods of low demand;
- 9.7.2.5** The Parties shall cooperate and coordinate with each other to the extent necessary in order to restore the Facility, Interconnection Facilities, and the Transmission System to their normal operating state, consistent with system conditions and Good Utility Practice; and,

9.7.3 Under-Frequency Load Shed Event. The Transmission System is designed to automatically activate a load-shed program as described in the Interconnection Guidelines in the event of an under-frequency system disturbance. Generator shall implement an under-frequency relay set point for the Facility as described in the Interconnection Guidelines to ensure “ride through” capability of the Transmission System, to the extent allowed by equipment limitations or warranties.

9.7.4 System Protection and Other Controls Requirements.

9.7.4.1 Protection and System Quality. Generator shall, at its expense, install, operate and maintain System Protection Facilities as a part of the Facility and/or the Generator Interconnection Facilities. Transmission Provider shall install at Generator’s expense any System Protection Facilities that may be required on the Transmission Provider Interconnection Facilities or the Transmission System as a result of the interconnection of the Facility and the Generator Interconnection Facilities.

9.7.4.2 Each Party’s facilities shall be designed to isolate any fault or abnormality on those facilities that would negatively affect the other Party’s system or the other entities connected to the Transmission Provider’s Transmission System.

9.7.4.3 Each Party shall be responsible for protection of its facilities consistent with Good Utility Practice.

9.7.4.4 Each Party’s protective relay design shall incorporate the necessary test switches to perform the tests required in Article 6. The required test switches will be placed such that they allow operation of lockout relays while preventing breaker failure schemes from operating and causing unnecessary breaker operations and/or the tripping of the Generator’s units.

9.7.4.5 Each Party will test, operate and maintain System Protection Facilities in accordance with Good Utility Practice.

9.7.4.6 Prior to the In-Service Date, and again prior to the Commercial Operation Date, each Party or its agent shall perform a complete calibration test and functional trip test of the System Protection Facilities. At intervals suggested by Good Utility Practice and following any apparent malfunction of the System Protection Facilities, each Party shall perform both calibration and functional trip tests of its System Protection Facilities. These tests do not require the tripping of any in-service generation unit. These tests do, however, require that all protective relays and lockout contacts be activated.

- 9.7.5 Requirements for Protection.** In compliance with the Interconnection Guidelines and Applicable Standards, Generator shall provide, install, own, and maintain relays, circuit breakers and all other devices necessary to promptly remove any fault contribution of the Facility to any short circuit occurring on the Transmission System not otherwise isolated by Transmission Provider equipment. Such protective equipment shall include, without limitation, a disconnecting device or switch with load-interrupting capability located between the Facility and the Transmission System at a site selected upon mutual agreement (not to be unreasonably withheld, conditioned or delayed) of the Parties. Generator shall be responsible for protection of the Facility and Generator's other equipment from such conditions as negative sequence currents, over- or under-frequency, sudden load rejection, over- or under-voltage, and generator loss-of-field. Generator shall be solely responsible to disconnect the Facility and Generator's other equipment if conditions on the Transmission System could adversely affect the Facility.
- 9.7.6 Power Quality.** Neither Party's facilities shall cause excessive voltage flicker nor introduce excessive distortion to the sinusoidal voltage or current waves as defined by ANSI Standard C84.1-1989, in accordance with IEEE Standard 519, or any applicable superseding electric industry standard including the Interconnection Guidelines. In the event of a conflict between ANSI Standard C84.1-1989, or any applicable superseding electric industry standard, and the Interconnection Guidelines, ANSI Standard C84.1-1989, or the applicable superseding electric industry standard, shall control.
- 9.8 Switching and Tagging Rules.** Each Party shall provide the other Party a copy of its Switching and Tagging Rules that are applicable to the other Party's activities. Such Switching and Tagging Rules shall be developed on a non-discriminatory basis. The Parties shall comply with applicable Switching and Tagging Rules, as amended from time to time, in obtaining clearances for work or for switching operations on equipment.
- 9.9 Use of Interconnection Facilities by Third Parties.**
- 9.9.1 Purpose of Interconnection Facilities.** Except as may be required by Applicable Laws or Regulations, or as otherwise agreed to among the Parties, the Interconnection Facilities shall be constructed for the sole purpose of interconnecting the Facility to the Transmission System and shall be used for no other purpose.
- 9.9.2 Third Party Users.** If required by Applicable Laws or Regulations or if the Parties mutually agree, such agreement not to be unreasonably withheld, to allow one or more third parties to use the Transmission Provider Interconnection Facilities, or any part thereof, Generator will be entitled to compensation for the capital expenses it incurred in connection with the Interconnection Facilities based upon the pro rata use of the Interconnection

Facilities by Transmission Provider, all third party users, and Generator, in accordance with Applicable Laws and Regulations or upon some other mutually-agreed upon methodology. In addition, cost responsibility for ongoing costs, including operation and maintenance costs associated with the Interconnection Facilities, will be allocated between Generator and any third party users based upon the pro rata use of the Interconnection Facilities by Transmission Provider, all third party users, and Generator, in accordance with Applicable Laws and Regulations or upon some other mutually agreed upon methodology. If the issue of such compensation or allocation cannot be resolved through such negotiations, it shall be submitted to FERC for resolution.

- 9.10 Data Exchange.** The Parties will cooperate with one another in the analysis of disturbances to either the Facility or the Transmission Provider's Transmission System by gathering and providing access to any information relating to any disturbance, including information from oscillography, protective relay targets, breaker operations and sequence of events records.

ARTICLE 10. MAINTENANCE

- 10.1 Transmission Provider Obligations.** Transmission Provider shall maintain the Transmission System and the Transmission Provider Interconnection Facilities in a safe and reliable manner and in accordance with this Agreement.
- 10.2 Generator Obligations.** Generator shall maintain the Facility and the Generator Interconnection Facilities in a safe and reliable manner and in accordance with this Agreement.
- 10.3 Coordination.** The Parties shall confer regularly to coordinate the planning, scheduling and performance of preventive and corrective maintenance on the Facility and the Interconnection Facilities.
- 10.4 Secondary Systems.** Each Party shall cooperate with the other in the inspection, maintenance, and testing of control or power circuits that operate below 600 volts, AC or DC, including, but not limited to, any hardware, control or protective devices, cables, conductors, electric raceways, secondary equipment panels, transducers, batteries, chargers, and voltage and current transformers that directly affect the operation of a Party's facilities and equipment which may reasonably be expected to impact the other Party. Each Party shall provide advance notice to the other Party before undertaking any work on such circuits, especially on electrical circuits involving circuit breaker trip and close contacts, current transformers, or potential transformers.
- 10.5 Operating and Maintenance Expenses.** Subject to the provisions herein addressing the use of facilities by others, and except for operations and maintenance expenses associated with modifications made for providing interconnection or transmission service to a third party and such third party pays for such expenses, Generator shall be responsible for all reasonable expenses including overheads, associated with: (1) owning, operating, maintaining, repairing, and replacing Generator Interconnection Facilities; and (2) operation, maintenance, repair and replacement of Transmission Provider Interconnection Facilities.

ARTICLE 11. PERFORMANCE OBLIGATION

- 11.1 Generator Interconnection Facilities.** Generator shall design, procure, construct, install, own and/or control the Generator Interconnection Facilities described in Appendix A, Interconnection Facilities and Network Upgrades, at its sole expense.
- 11.2 Transmission Provider Interconnection Facilities.** Transmission Owner shall design, procure, construct, install, own and/or control the Transmission Owner Interconnection Facilities described in Appendix A, Interconnection Facilities and Network Upgrades, at the sole expense of the Generator.
- 11.3 Network Upgrades.** Transmission Owner shall design, procure, construct, install, and own the Network Upgrades described in Appendix A, Interconnection Facilities and Network Upgrades. Unless the Transmission Provider elects to fund the capital for such facilities, they shall be solely funded by the Generator. In either case, the Generator shall be responsible for all costs related to Network Upgrades, subject to Article 11.4.
- 11.4 Transmission Credits.**
- 11.4.1 Refund of Amounts Advanced for Network Upgrades.** Generator shall be entitled to a cash refund, equal to the total amount paid to Transmission Provider for the Network Upgrades, including any tax gross-up or other tax-related payments, and not refunded to Generator pursuant to Article 5.14.7 or otherwise, to be paid to Generator on a dollar-for-dollar basis, as payments are made under the Transmission Provider Tariff for transmission services with respect to the Facility. Notwithstanding the foregoing, Transmission Provider shall refund all amounts paid by Generator for the Network Upgrades, together with interest, within five (5) years from the date the Network Upgrades are placed in service, so long as Transmission Provider continues to receive payments for transmission service with respect to the Facility during such period. Any refund shall include interest calculated in accordance with the methodology set forth in FERC's regulations at 18 C.F.R. §35.19a(a)(2)(ii) from the date of any payment for Network Upgrades through the date on which the Generator receives a refund of such payment pursuant to this subparagraph. Generator may assign such refund rights to any person.
- 11.4.2** Notwithstanding any other provision of this Agreement, nothing herein shall be construed as relinquishing or foreclosing any rights, including but not limited to firm transmission rights, capacity rights, transmission congestion rights, or transmission credits, that the Generator, shall be entitled to, now or in the future under any other agreement or tariff as a result of, or otherwise associated with, the transmission capacity, if any, created by the Network Upgrades, including the right to obtain refunds or transmission credits for transmission service that is not associated with the Facility.

11.5 Financial Security Arrangements. At least ninety (90) Calendar Days prior to the commencement of the procurement, installation, or construction of discrete Transmission Provider Interconnection Facilities/Network Upgrade projects, Generator shall provide Transmission Provider, at Generator's option, a guarantee, a surety bond, letter of credit or other form of security that is reasonably acceptable to Transmission Provider and is consistent with the Uniform Commercial Code of the jurisdiction identified in Article 15.2.1. Such security for payment shall be in an amount sufficient to cover the costs for constructing, procuring and installing the applicable Transmission Provider Interconnection Facilities/Network Upgrade projects and shall be reduced on a dollar-for-dollar basis for payments made to Transmission Provider under this Agreement during its term.

11.5.1 Provision of Security. At least thirty (30) Calendar Days prior to the commencement of the procurement, installation, or construction of discrete Transmission Provider Interconnection Facilities/Network Upgrade projects, Generator shall provide Transmission Provider, at Generator's option, a guarantee, a surety bond, letter of credit or other form of security that is reasonably acceptable to Transmission Provider and is consistent with the Uniform Commercial Code of the jurisdiction identified in Article 15.2.1. Such security for payment shall be in an amount sufficient to cover the costs for constructing, procuring and installing the applicable Transmission Provider Interconnection Facilities/Network Upgrade projects and shall be reduced on a dollar-for-dollar basis for payments made to Transmission Provider under this Agreement during its term. In addition:

11.5.1.1 The guarantee must be made by an entity that meets the creditworthiness requirements of Transmission Provider, and contain terms and conditions that guarantee payment of any amount that may be due from Generator, up to an agreed-to maximum amount.

11.5.1.2 The letter of credit must be issued by a financial institution reasonably acceptable to Transmission Provider and must specify a reasonable expiration date.

11.5.1.3 The surety bond must be issued by an insurer reasonably acceptable to Transmission Provider and must specify a reasonable expiration date.

11.6 Generator Compensation. If Transmission Provider requests or directs Generator to provide a service pursuant to Articles 9.6.2 (Voltage Schedules), or 13.5.1 of this Agreement, Transmission Provider shall compensate Generator in accordance with Generator's applicable rate schedule then in effect unless the provision of such service(s) is subject to an ISO/RTO FERC-approved rate schedule. Generator shall serve Transmission Provider or ISO/RTO with any filing of a proposed rate schedule at the time of such filing with FERC.

11.6.1 Generator Compensation for Actions During Emergency Condition. Transmission Provider [or ISO/RTO] shall compensate Generator for its provision of real and reactive power and other Emergency Condition services that Generator provides to support the Transmission System during an Emergency Condition in accordance with Article 11.6.

ARTICLE 12. INVOICE

- 12.1 General.** Each Party shall submit to the other Party, on a monthly basis, invoices of amounts due for the preceding month. Each invoice shall state the month to which the invoice applies and fully describe the services and equipment provided. The Parties may discharge mutual debts and payment obligations due and owing to each other on the same date through netting, in which case all amounts a Party owes to the other Party under this Agreement, including interest payments or credits, shall be netted so that only the net amount remaining due shall be paid by the owing Party.
- 12.2 Final Invoice.** Within six months after completion of the construction of the Transmission Provider Interconnection Facilities and the Network Upgrades, Transmission Provider shall provide an invoice of the final cost of the construction of the Transmission Provider Interconnection Facilities and the Network Upgrades and shall set forth such costs in sufficient detail to enable Generator to compare the actual costs with the estimates and to ascertain deviations, if any, from the cost estimates. Transmission Provider shall refund to Generator any amount by which the actual payment by Generator for estimated costs exceeds the actual costs of construction within thirty (30) Calendar Days of the issuance of such final construction invoice.
- 12.3 Payment.** Invoices shall be rendered to the paying Party at the address specified in Article 16. The Party receiving the invoice shall pay the invoice within thirty (30) Calendar Days of receipt. All payments shall be made in immediately available funds payable to the other Party, or by wire transfer to a bank named and account designated by the invoicing Party. Payment of invoices by Generator will not constitute a waiver of any rights or claims Generator may have under this Agreement.
- 12.4 Disputes.** In the event of a billing dispute between Transmission Provider and Generator, Transmission Provider shall continue to provide Interconnection Service under this Agreement as long as Generator: (i) continues to make all payments not in dispute; and (ii) pays to Transmission Provider or into an independent escrow account the portion of the invoice in dispute, pending resolution of such dispute. If Generator fails to meet these two requirements for continuation of service, then Transmission Provider may provide notice to Generator of a Breach pursuant to Article 17. Within thirty (30) Calendar Days after the resolution of the dispute, the Party that owes money to the other Party shall pay the amount due with interest calculated in accord with the methodology set forth in FERC's Regulations at 18 C.F.R.. § 35.19a (a) (2)(ii).

ARTICLE 13. EMERGENCIES

- 13.1 Definition.** “Emergency Condition” shall mean a condition or situation: (i) that in the judgment of the Party making the claim is imminently likely to endanger life or property; or (ii) that, in the case of Transmission Provider, is imminently likely (as determined in a non-discriminatory manner) to cause a material adverse effect on the security of, or damage to the Transmission System, the Transmission Provider Interconnection Facilities or the Transmission Systems of others to which the Transmission System is directly connected; or (iii) that, in the case of Generator, is imminently likely (as determined in a non-discriminatory manner) to cause a material adverse effect on the security of, or damage to, the Facility or the Generator Interconnection Facilities. System restoration and black start shall be considered Emergency Conditions; *provided*, that Generator is not obligated by this Agreement to possess black start capability. Any condition or situation that results from a lack of sufficient generating capacity to meet load requirements that results solely from economic conditions shall not, on its own, constitute an Emergency Condition.
- 13.2 Obligations.** Each Party shall comply with the Emergency Condition procedures of the applicable ISO/RTO, NERC, the Applicable Reliability Council, Applicable Laws and Regulations, and any emergency procedures agreed to by the Operating Committee.
- 13.3 Notice.** Transmission Provider shall notify Generator promptly when it becomes aware of an Emergency Condition that affects the Transmission Provider Interconnection Facilities or the Transmission System that may reasonably be expected to affect Generator's operation of the Facility or the Generator Interconnection Facilities. Generator shall notify Transmission Provider promptly when it becomes aware of an Emergency Condition that affects the Facility or the Generator Interconnection Facilities that may reasonably be expected to affect the Transmission System or the Transmission Provider Interconnection Facilities. To the extent information is known, the notification shall describe the Emergency Condition, the extent of the damage or deficiency, the expected effect on the operation of Generator's or Transmission Provider's facilities and operations, its anticipated duration and the corrective action taken and/or to be taken. The initial notice shall be followed as soon as practicable with written notice.
- 13.4 Immediate Action.** Unless, in Generator's reasonable judgment, immediate action is required, Generator shall obtain the consent of Transmission Provider, such consent to not be unreasonably withheld, prior to performing any manual switching operations at the Facility or the Generation Interconnection Facilities in response to an Emergency Condition either declared by the Transmission Provider or otherwise regarding the Transmission System.
- 13.5 Transmission Provider Authority.**
- 13.5.1 General.** Transmission Provider may take whatever actions or inactions with regard to the Transmission System or the Transmission Provider Interconnection Facilities it deems necessary during an Emergency Condition in order to (i) preserve public health and safety, (ii) preserve the reliability of the

Transmission System or the Transmission Provider Interconnection Facilities, (iii) limit or prevent damage, and (iv) expedite restoration of service. Transmission Provider shall use Reasonable Efforts to minimize the effect of such actions or inactions on the Facility or the Generation Interconnection Facilities. [Transmission Provider may, on the basis of technical considerations, require the Facility to mitigate an Emergency Condition by taking actions necessary and limited in scope to remedy the Emergency Condition, including, but not limited to, directing Generator to shut-down, start-up, increase or decrease the real or reactive power output of the Facility; implementing a curtailment, reduction or disconnection pursuant to Article 14.5.2; directing the Generator to assist with blackstart (if available) or restoration efforts; or altering the outage schedules of the Facility and the Generator Interconnection Facilities. Generator shall comply with all of Transmission Provider's operating instructions concerning Facility real power and/or reactive power output within the manufacturer's design limitations of the Facility's equipment that is in service and physically available for operation at the time, in compliance with applicable laws and regulations.]

13.5.2 Curtailment, Reduction, and Disconnection. Transmission Provider may curtail or reduce Interconnection Service or disconnect the Facility or the Generation Interconnection Facilities, when such curtailment, reduction or disconnection is necessary under Good Utility Practice due to Emergency Conditions. These rights are separate and distinct from any right of curtailment of the Transmission Provider pursuant to the Transmission Provider Tariff. When the Transmission Provider can schedule the curtailment, reduction or disconnection in advance, Transmission Provider shall notify Generator of the reasons, timing and expected duration of the curtailment, reduction or disconnection. Transmission Provider shall attempt to schedule such curtailment, reduction or disconnection to coincide with the scheduled outages of the Facility or, if that is not possible, to schedule such curtailment, reduction or disconnection during non-peak load periods. Any curtailment, reduction or disconnection shall continue only for so long as reasonably necessary under Good Utility Practice. The Parties shall cooperate with each other to restore the Facility, the Interconnection Facilities, and the Transmission System to their normal operating state as soon as practicable consistent with Good Utility Practice.

13.6 Generator Authority. Generator may take whatever actions or inactions with regard to the Facility or the Generator Interconnection Facilities it deems necessary during an Emergency Condition in order to (i) preserve public health and safety, (ii) preserve the reliability of the Facility or the Generator Interconnection Facilities, (iii) limit or prevent damage, and (iv) expedite

restoration of service. Generator shall use Reasonable Efforts to minimize the effect of such actions or inactions on the Transmission System and the Transmission Provider Interconnection Facilities. Transmission Provider shall use Reasonable Efforts to assist Generator in such actions.

- 13.7 Limited Liability.** Except as otherwise provided in Article 14.7 of this Agreement, neither Party shall be liable to the other for any action it takes in responding to an Emergency Condition so long as such action is made in good faith and is consistent with Good Utility Practice.

ARTICLE 14. GOVERNING LAW AND APPLICABLE TARIFFS

14.1 Regulatory Requirements. Each Party's obligations under this Agreement shall be subject to its receipt of any required approval or certificate from one or more Governmental Authorities in the form and substance satisfactory to the applying Party, or the Party making any required filings with, or providing notice to, such Governmental Authorities, and the expiration of any time period associated therewith. Each Party shall in good faith seek and use its Reasonable Efforts to obtain such other approvals. Nothing in this Agreement shall require Generator to take any action that could result in its inability to obtain, or its loss of, status or exemption under the Federal Power Act or the Public Utility Holding Company Act of 1935, as amended.

14.2 Governing Law and Applicable Tariffs.

14.2.1 The validity, interpretation and performance of this Agreement and each of its provisions shall be governed by the laws of the State where the Point of Interconnection is located, without regard to its conflicts of law principles.

14.2.2 This Agreement is subject to all Applicable Laws and Regulations.

14.2.3 Each Party expressly reserves the right to seek changes in, appeal, or otherwise contest any laws, orders, rules, or regulations of a Governmental Authority.

ARTICLE 15. NOTICES

- 15.1 General.** Unless otherwise provided in this Agreement, any notice, demand or request required or permitted to be given by either Party to the other and any instrument required or permitted to be tendered or delivered by either Party in writing to the other shall be effective when delivered and may be so given, tendered or delivered, by recognized national courier, or by depositing the same with the United States Postal Service with postage prepaid, for delivery by certified or registered mail, addressed to the Party, or personally delivered to the Party, at the address set out below:

Transmission Provider:

[To be supplied.]

Generator:

[To be supplied.]

Either Party may change the notice information in Appendix D, Standard Generator Interconnection Agreement, by giving five (5) Business Days written notice prior to the effective date of the change.

- 15.2 Billings and Payments.** Billings and payments shall be sent to the addresses set out below:

Transmission Provider:

[To be supplied.]

Generator:

- 15.3 Alternative Forms of Notice.** Any notice or request required or permitted to be given by either Party to the other and not required by this Agreement to be given in writing may be so given by telephone, facsimile or email to the telephone numbers and email addresses set out below:

Transmission Provider:

Generator:

- 15.4 Operations and Maintenance Notice.** Each Party shall notify the other Party in writing of the identity of the person(s) that it designates as the point(s) of contact with respect to the implementation of Articles 9 and 10.

ARTICLE 16. FORCE MAJEURE

16.1 Force Majeure. An event of Force Majeure means any act of God, labor disturbance, act of the public enemy, war, insurrection, riot, fire, storm or flood, explosion, breakage or accident to machinery or equipment, any Curtailment, order, regulation or restriction imposed by governmental military or lawfully established civilian authorities, or any other caused beyond a Party's control. A Force Majeure event does not include an act of negligence or intentional wrongdoing. Neither Party will be considered in default as to any obligation hereunder if prevented from fulfilling the obligation due to an event of Force Majeure. However, a Party whose performance under this is hindered by an event of Fore Majeure shall make all reasonable efforts to perform its obligations hereunder.

ARTICLE 17. DEFAULT

17.1 Default

17.1.1 General. The term “Default” shall mean the failure of either Party to perform any obligation in the time or manner provided in this Agreement. No Default shall exist where such failure to discharge an obligation (other than the payment of money) is the result of Force Majeure as defined in this Agreement or the result of an act or omission of the other Party. Upon a Default, the non-defaulting Party shall give written notice of such Default to the defaulting Party. Except as provided in Article 17.1.2, the defaulting Party shall have thirty (30) Calendar Days from receipt of the Default notice within which to cure such Default; provided however, if such Default is not capable of cure within thirty (30) Calendar Days, the defaulting Party shall commence such cure within thirty (30) Calendar Days after notice and continuously and diligently complete such cure within ninety (90) Calendar Days from receipt of the Default notice; and, if cured within such time, the Default specified in such notice shall cease to exist.

17.1.2 Right to Terminate. If a Default is not cured as provided in this Article, or if a Default is not capable of being cured within the period provided for herein, the non-defaulting Party shall have the right to terminate this Agreement by written notice at any time until cure occurs, and be relieved of any further obligation hereunder and, whether or not that Party terminates this Agreement, to recover from the defaulting Party all amounts due hereunder, plus all other damages and remedies to which it is entitled at law or in equity. The provisions of this Article will survive termination of this Agreement.

ARTICLE 18. INDEMNITY

- 18.1 Indemnity.** The Parties shall at all times indemnify, defend, and save the other Party harmless from, any and all damages, losses, claims, including claims and actions relating to injury to or death of any person or damage to property, demand, suits, recoveries, costs and expenses, court costs, attorney fees, and all other obligations by or to third parties, arising out of or resulting from the other Party's performance of obligations under this Agreement on behalf of the indemnifying Party, except in cases of negligence or intentional wrongdoing by the indemnifying Party.

ARTICLE 19. ASSIGNMENT

19.1 Assignment. This Agreement may be assigned by either Party only with the written consent of the other; provided that either Party may assign this Agreement without the consent of the other Party to any affiliate of the assigning Party with an equal or greater credit rating and with the legal authority and operational ability to satisfy the obligations of the assigning Party under this Agreement; and provided further that the Generator shall have the right to assign this Agreement, without the consent of the Transmission Provider, for collateral security purposes to aid in providing financing for the Facility, provided that the Generator will require any secured party, trustee or mortgagee to notify the Transmission Provider of any such assignment. Any financing arrangement entered into by the Generator pursuant to this Article will provide that prior to or upon the exercise of the secured party's, trustee's or mortgagee's assignment rights pursuant to said arrangement, the secured creditor, the trustee or mortgagee will notify the Transmission Provider of the date and particulars of any such exercise of assignment right(s). Any attempted assignment that violates this Article is void and ineffective. Any assignment under this Agreement shall not relieve a Party of its obligations, nor shall a Party's obligations be enlarged, in whole or in part, by reason thereof. Where required, consent to assignment will not be unreasonably withheld, conditioned or delayed.

ARTICLE 20. SEVERABILITY

- 20.1 Severability.** If any provision in this Agreement is finally determined to be invalid, void or unenforceable by any court or other Governmental Authority having jurisdiction, such determination shall not invalidate, void or make unenforceable any other provision, agreement or covenant of this Agreement; [provided that if the Generator (or any third-party, but only if such third-party is not acting at the direction of the Transmission Provider) seeks and obtains such a final determination with respect to any provision of Article 5.1.B, then none of the provisions of Article 5.1.B shall thereafter have any force or effect and the Parties' rights and obligations shall be governed solely by Article 5.1.A].

ARTICLE 21. COMPARABILITY

21.1 Comparability. The Parties will comply with all applicable comparability and code of conduct laws, rules and regulations, as amended from time to time.

ARTICLE 22. CONFIDENTIALITY

22.1 Confidentiality. “Confidential Information” shall mean any confidential, proprietary or trade secret information of a plan, specification, pattern, procedure, design, device, list, concept, policy or compilation relating to the present or planned business of a Party, which is designated as confidential by the Party supplying the information, whether conveyed orally, electronically, in writing, through inspection, or otherwise. Confidential Information shall include, without limitation, all information relating to a Party’s technology, research and development, business affairs, and pricing, and any information supplied by either of the Parties to the other prior to the execution of this Agreement. Information is Confidential Information only if it is clearly designated or marked in writing as confidential on the face of the document, or, if the information is conveyed orally or by inspection, if the Party providing the information orally informs the Party receiving the information that the information is confidential.

22.1.1 Term. During the term of this Agreement, and for a period of three (3) years after the expiration or termination of this Agreement, except as otherwise provided in this Article 22, each Party shall hold in confidence and shall not disclose to any person Confidential Information.

22.1.2 Scope. Confidential Information shall not include information that the receiving Party can demonstrate: (1) is generally available to the public other than as a result of a disclosure by the receiving Party; (2) was in the lawful possession of the receiving Party on a non-confidential basis before receiving it from the of the receiving Party, after due inquiry, was under no obligation to the other Party to keep disclosing Party; (3) was supplied to the receiving Party without restriction by a third party, who, to the knowledge such information confidential; (4) was independently developed by the receiving Party without reference to Confidential Information of the disclosing Party; (5) is, or becomes, publicly known, through no wrongful act or omission of the receiving Party or Breach of this Agreement; or (6) is required, in accordance with Article 22.1.7, Order of Disclosure, to be disclosed by any Governmental Authority or is otherwise required to be disclosed by law or subpoena, or is necessary in any legal proceeding establishing rights and obligations under this Agreement. Information designated as Confidential Information will no longer be deemed confidential if the Party that designated the information as confidential notifies the other Party that it no longer is confidential.

22.1.3 Release of Confidential Information. Neither Party shall release or disclose Confidential Information to any other person, except to its employees, consultants, or to parties who may be or considering providing financing to or equity participation with Generator, or to potential purchasers or assignees of Generator, on a need-to-know basis in connection with this Agreement, unless such person has first been advised of the confidentiality provisions of this Article 22 and has agreed to comply with such provisions. Notwithstanding

the foregoing, a Party providing Confidential Information to any person shall remain primarily responsible for any release of Confidential Information in contravention of this Article 22.

- 22.1.4 Rights.** Each Party retains all rights, title, and interest in the Confidential Information that each Party discloses to the other Party. The disclosure by each Party to the other Party of Confidential Information shall not be deemed a waiver by either Party or any other person or entity of the right to protect the Confidential Information from public disclosure.
- 22.1.5 No Warranties.** By providing Confidential Information, neither Party makes any warranties or representations as to its accuracy or completeness. In addition, by supplying Confidential Information, neither Party obligates itself to provide any particular information or Confidential Information to the other Party nor to enter into any further agreements or proceed with any other relationship or joint venture.
- 22.1.6 Standard of Care.** Each Party shall use at least the same standard of care to protect Confidential Information it receives as it uses to protect its own Confidential Information from unauthorized disclosure, publication or dissemination. Each Party may use Confidential Information solely to fulfill its obligations to the other Party under this Agreement or its regulatory requirements.
- 22.1.7 Order of Disclosure.** If a court or a Government Authority or entity with the right, power, and apparent authority to do so requests or requires either Party, by subpoena, oral deposition, interrogatories, requests for production of documents, administrative order, or otherwise, to disclose Confidential Information, that Party shall provide the other Party with prompt notice of such request(s) or requirement(s) so that the other Party may seek an appropriate protective order or waive compliance with the terms of this Agreement. Notwithstanding the absence of a protective order or waiver, the Party may disclose such Confidential Information which, in the opinion of its counsel, the Party is legally compelled to disclose. Each Party will use reasonable efforts to obtain reliable assurance that confidential treatment will be accorded any Confidential Information so furnished.
- 22.1.8 Termination of Agreement.** Upon termination of this Agreement for any reason, each Party shall, within ten (10) Calendar Days of receipt of a written request from the other Party, use reasonable efforts to destroy, erase, or delete (with such destruction, erasure, and deletion certified in writing to the other Party) or return to the other Party, without retaining copies thereof, any and all written or electronic Confidential Information received from the other Party.
- 22.1.9 Remedies.** The Parties agree that monetary damages would be inadequate to compensate a Party for the other Party's breach of its obligations under this Article 22. Each Party accordingly agrees

that the other Party shall be entitled to equitable relief, by way of injunction or otherwise, if the first Party breaches or threatens to breach its obligations under this Article 22, which equitable relief shall be granted without bond or proof of damages, and the receiving Party shall not plead in defense that there would be an adequate remedy at law. Such remedy shall not be deemed an exclusive remedy for the breach of this Article 22, but shall be in addition to all other remedies available at law or in equity. The Parties further acknowledge and agree that the covenants contained herein are necessary for the protection of legitimate business interests and are reasonable in scope. No Party, however, shall be liable for indirect, incidental, or consequential or punitive damages of any nature or kind resulting from or arising in connection with this Article 22.

22.1.10 Disclosure to FERC or its Staff. Notwithstanding anything in this Article 22 to the contrary, if FERC or its staff, during the course of an investigation or otherwise, requests information from one of the Parties that is otherwise required to be maintained in confidence pursuant to this Agreement, the Party shall provide the requested information to FERC or its staff, within the time provided for in the request for information. In providing the information to FERC or its staff, the Party may, consistent with 18 C.F.R. Section 388.112, request that the information be treated as confidential and non-public by FERC and its staff and that the information be withheld from public disclosure. The Party shall notify the other Party to the Agreement when it is notified by FERC or its staff that a request has been received, at which time either of the Parties may respond before such information would be made public, pursuant to 18 C.F.R. Section 388.112.

22.1.11 Subject to the exception in Article 22.1.10, any information that a Party claims is competitively sensitive, commercial or financial information under this Agreement ("Confidential Information") shall not be disclosed by the other Party to any person not employed or retained by the other Party, except to the extent disclosure is (i) required by law; (ii) reasonably deemed by the disclosing Party to be required to be disclosed in connection with a dispute between or among the Parties, or the defense of litigation or dispute; (iii) otherwise permitted by consent of the other Party, such consent not to be unreasonably withheld; or (iv) necessary to fulfill its obligations under this Agreement or as a transmission service provider or a Control Area operator including disclosing the Confidential Information to the ISO. The Party asserting confidentiality shall notify the other Party in writing of the information it claims is confidential. Prior to any disclosures of the other Party's Confidential Information under this subparagraph, or if any third party or Governmental Authority makes any request or demand for any of the information described in this subparagraph, the disclosing Party agrees to promptly notify the other Party in writing and agrees to assert confidentiality and cooperate with the other Party in seeking to protect the Confidential Information from

public disclosure by confidentiality agreement, protective order or other reasonable measures.

22.1.12 This provision shall not apply to any information that was or is hereafter in the public domain (except as a result of a breach of this provision).

ARTICLE 23. ENVIRONMENTAL RELEASES

- 23.1** Each Party shall notify the other Party, first orally and then in writing, of the release of any Hazardous Substances, any asbestos or lead abatement activities, or any type of remediation activities related to the Facility or the Interconnection Facilities, each of which may reasonably be expected to affect the other Party. The notifying Party shall: (i) provide the notice as soon as practicable, provided such Party makes a good faith effort to provide the notice no later than twenty-four hours after such Party becomes aware of the occurrence; and (ii) promptly furnish to the other Party copies of any publicly available reports filed with any Governmental Authorities addressing such events.

ARTICLE 24. INFORMATION REQUIREMENTS

24.1 Information Acquisition. Transmission Provider and the Generator shall submit specific information regarding the electrical characteristics of their respective facilities to each other as described below and in accordance with Applicable Standards.

24.2 Information Submission by Transmission Provider. The initial information submission by Transmission Provider shall occur no later than one hundred eighty (180) Calendar Days prior to Trial Operation and shall include Transmission System information necessary to allow the Generator to select equipment and meet any system protection and stability requirements, unless otherwise mutually agreed to by both Parties. On a monthly basis Transmission Provider shall provide Generator a status report on the construction and installation of Transmission Provider Interconnection Facilities and Network Upgrades, including, but not limited to, the following information: progress to date: (1) a description of the activities since the last report (2) a description of the action items for the next period; and (3) the delivery status of equipment ordered.

24.3 Updated Information Submission by Generator. The updated information submission by the Generator, including manufacturer information, shall occur no later than one hundred eighty (180) Calendar Days prior to the Trial Operation. Generator shall submit a completed copy of the generator data requirements contained in Transmission Provider's GIS request procedure. It shall also include any additional information provided to Transmission Provider for the Feasibility and Facilities Study [Conform with Interconnection Procedures]. Information in this submission shall be the most current Facility design or expected performance data. Information submitted for stability models shall be compatible with Transmission Provider standard models. If there is no compatible model, the Generator will work with a consultant mutually agreed to by the Parties to develop and supply a standard model and associated information.

If the Generator's data is materially different from what was originally provided to Transmission Provider pursuant to the Interconnection Study Agreement between Transmission Provider and Generator, then Transmission Provider will conduct appropriate studies to determine the impact on the Transmission Provider Transmission System based on the actual data submitted pursuant to this Article 24.3. The Generator shall not begin Trial Operation until such studies are completed.

24.4 Information Supplementation. Prior to the Operation Date, the Parties shall supplement their information submissions described above in this Article 24 with any and all "as-built" Facility information or "as-tested" performance information that differs from the initial submissions or, alternatively, written confirmation that no such differences exist. The Generator shall conduct open circuit "step voltage" tests on the generator to verify proper operation of the generator's automatic voltage regulator. Unless otherwise agreed, the test conditions shall include: (1) generator at synchronous speed; (2) automatic voltage regulator on and in voltage control mode; and (3) a five percent (5%) change in generator terminal

voltage initiated by a change in the voltage regulators reference voltage. Recordings showing the responses of generator terminal and field voltages shall be provided to Transmission Provider. In the event that direct recordings of these voltages is impractical, recordings of other voltages or currents that mirror the response of the generator's terminal or field voltage are acceptable if information necessary to translate these alternate quantities to actual generator terminal or field voltages is provided. The Generator may elect to provide recordings for only one generator when the other generators at the site are found to have identical design and response characteristics. Subsequent to the Operation Date, the Generator shall provide Transmission Provider any information changes due to equipment replacement, repair, or adjustment. Transmission Provider shall provide the Generator any information changes due to equipment replacement, repair or adjustment in the directly connected substation or any adjacent Transmission Provider-owned substation that may affect the Generator Interconnection Facilities equipment ratings, protection or operating requirements. The Parties shall provide such information no later than thirty (30) Calendar Days after the date of the equipment replacement, repair or adjustment.

ARTICLE 25. INFORMATION ACCESS AND AUDIT RIGHTS

- 25.1 Information Access.** Each Party (the “disclosing Party”) shall make available to the other Party information that is in the possession of the disclosing Party and is necessary in order for the other Party to: (i) verify the costs incurred by the disclosing Party for which the other Party is responsible under this Agreement; and (ii) carry out its obligations and responsibilities under this Agreement. The Parties shall not use such information for purposes other than those set forth in this Article 25.1 and to enforce their rights under this Agreement.
- 25.2 Reporting of Non-Force Majeure Events.** Each Party (the “notifying Party”) shall notify the other Party when the notifying Party becomes aware of its inability to comply with the provisions of this Agreement for a reason other than a Force Majeure event. The Parties agree to cooperate with each other and provide necessary information regarding such inability to comply, including the date, duration, reason for the inability to comply, and corrective actions taken or planned to be taken with respect to such inability to comply. Notwithstanding the foregoing, notification, cooperation or information provided under this Article shall not entitle the Party receiving such notification to allege a cause for anticipatory breach of this Agreement.
- 25.3 Audit Rights.** Subject to the requirements of confidentiality under Article 22 of this Agreement, each Party shall have the right, during normal business hours, and upon prior reasonable notice to the other Party, to audit at its own expense the other Party's accounts and records pertaining to either Party's performance or either Party's satisfaction of obligations under this Agreement. Such audit rights shall include audits of the other Party's costs, calculation of invoiced amounts, the Transmission Provider's efforts to allocate responsibility for the provision of reactive support to the Transmission System, the Transmission Provider's efforts to allocate responsibility for curtailment or reduction of generation on the Transmission System, and each Party's actions in an Emergency Condition. Any audit authorized by this Article shall be performed at the offices where such accounts and records are maintained and shall be limited to those portions of such accounts and records that relate to each Party's performance and satisfaction of obligations under this Agreement. Each Party shall keep such accounts and records for a period equivalent to the audit rights periods described in Article 25.4.
- 25.4 Audit Rights Periods.**
- 25.4.1 Audit Rights Period for Construction-Related Accounts and Records.** Accounts and records related to the design, engineering, procurement, and construction of Transmission Provider Interconnection Facilities and Network Upgrades shall be subject to audit for a period of twenty-four months following Transmission Provider's issuance of a final invoice in accordance with Article 12.2.
- 25.4.2 Audit Rights Period for All Other Accounts and Records.** Accounts and records related to either Party's performance or satisfaction of all obligations under this Agreement other than those

described in Article 25.4.1 shall be subject to audit as follows: (i) for an audit relating to cost obligations, the applicable audit rights period shall be twenty-four months after the auditing Party's receipt of an invoice giving rise to such cost obligations; and (ii) for an audit relating to all other obligations, the applicable audit rights period shall be twenty-four months after the event for which the audit is sought.

25.5 Audit Results. If an audit by a Party determines that an overpayment or an underpayment has occurred, a notice of such overpayment or underpayment shall be given to the other Party together with those records from the audit which support such determination.

ARTICLE 26. SUBCONTRACTORS

- 26.1 General.** Nothing in this Agreement shall prevent a Party from utilizing the services of any subcontractor as it deems appropriate to perform its obligations under this Agreement; provided, however, that each Party shall require its subcontractors to comply with all applicable terms and conditions of this Agreement in providing such services and each Party shall remain primarily liable to the other Party for the performance of such subcontractor.
- 26.2 Responsibility of Principal.** The creation of any subcontract relationship shall not relieve the hiring Party of any of its obligations under this Agreement. The hiring Party shall be fully responsible to the other Party for the acts or omissions of any subcontractor the hiring Party hires as if no subcontract had been made; provided, however, that in no event shall the Transmission Provider be liable for the actions or inactions of the Generator or its subcontractors with respect to obligations of the Generator under Article 5 of this Agreement. Any applicable obligation imposed by this Agreement upon the hiring Party shall be equally binding upon, and shall be construed as having application to, any subcontractor of such Party.
- 26.3 No Limitation by Insurance.** The obligations under this Article 26 will not be limited in any way by any limitation of subcontractor's insurance.

ARTICLE 27. DISPUTES

- 27.1 Submission.** In the event either Party has a dispute, or asserts a claim, that arises out of or in connection with this Agreement or its performance, such Party (the “disputing Party”) shall provide the other Party with written notice of the dispute or claim (“Notice of Dispute”). Such dispute or claim shall be referred to a designated senior representative of each Party for resolution on an informal basis as promptly as practicable after receipt of the Notice of Dispute by the other Party. In the event the designated representatives are unable to resolve the claim or dispute within thirty (30) Calendar Days of the other Party’s receipt of the Notice of Dispute, such claim or dispute may, upon mutual agreement of the Parties, be submitted to arbitration and resolved in accordance with the arbitration procedures set forth below. In the event the Parties do not agree to submit such claim or dispute to arbitration, each Party may exercise whatever rights and remedies it may have in equity or at law consistent with the terms of this Agreement.
- 27.2 External Arbitration Procedures.** Any arbitration initiated under this Agreement shall be conducted before a single neutral arbitrator appointed by the Parties. If the Parties fail to agree upon a single arbitrator within ten (10) Calendar Days of the submission of the dispute to arbitration, each Party shall choose one arbitrator who shall sit on a three-member arbitration panel. The two arbitrators so chosen shall within twenty (20) Calendar Days select a third arbitrator to chair the arbitration panel. In either case, the arbitrators shall be knowledgeable in electric utility matters, including electric transmission and bulk power issues, and shall not have any current or past substantial business or financial relationships with any party to the arbitration (except prior arbitration). The arbitrator(s) shall provide each of the Parties an opportunity to be heard and, except as otherwise provided herein, shall conduct the arbitration in accordance with the Commercial Arbitration Rules of the American Arbitration Association (“Arbitration Rules”) and any applicable FERC regulations or RTO rules; provided, however, in the event of a conflict between the Arbitration Rules and the terms of this Article 27, the terms of this Article 27 shall prevail.
- 27.3 Arbitration Decisions.** Unless otherwise agreed by the Parties, the arbitrator(s) shall render a decision within ninety (90) Calendar Days of appointment and shall notify the Parties in writing of such decision and the reasons therefor. The arbitrator(s) shall be authorized only to interpret and apply the provisions of the Agreement and shall have no power to modify or change any provision of the Agreement in any manner. The decision of the arbitrator(s) shall be final and binding upon the Parties, and judgment on the award may be entered in any court having jurisdiction. The decision of the arbitrator(s) may be appealed solely on the grounds that the conduct of the arbitrator(s), or the decision itself, violated the standards set forth in the Federal Arbitration Act or the Administrative Dispute Resolution Act. The final decision of the arbitrator must also be filed with FERC if it affects jurisdictional rates, terms and conditions of service, Interconnection Facilities, or Network Upgrades.
- 27.4 Costs.** Each Party shall be responsible for its own costs incurred during the arbitration process and for the following costs, if applicable: (1) the cost of the arbitrator chosen by the Party to sit on the three member panel and one half of

the cost of the third arbitrator chosen; or (2) one half the cost of the single arbitrator jointly chosen by the Parties.

ARTICLE 28. REPRESENTATIONS, WARRANTIES AND COVENANTS

28.1 General. Each Party makes the following representations, warranties and covenants:

- 28.1.1 Good Standing.** Such Party is duly organized, validly existing and in good standing under the laws of the state in which it is organized, formed, or incorporated, as applicable; that it is qualified to do business in the state or states in which the Facility, Interconnection Facilities and Network Upgrades owned by such Party, as applicable, are located; and that it has the corporate power and authority to own its properties, to carry on its business as now being conducted and to enter into this Agreement and carry out the transactions contemplated hereby and perform and carry out all covenants and obligations on its part to be performed under and pursuant to this Agreement.
- 28.1.2 Authority.** Such Party has the right, power and authority to enter into this Agreement, to become a party hereto and to perform its obligations hereunder. This Agreement is a legal, valid and binding obligation of such Party, enforceable against such Party in accordance with its terms, except as the enforceability thereof may be limited by applicable bankruptcy, insolvency, reorganization or other similar laws affecting creditors' rights generally and by general equitable principles (regardless of whether enforceability is sought in a proceeding in equity or at law).
- 28.1.3 No Conflict.** The execution, delivery and performance of this Agreement does not violate or conflict with the organizational or formation documents, or bylaws or operating agreement, of such Party, or any judgment, license, permit, order, material agreement or instrument applicable to or binding upon such Party or any of its assets
- 28.1.4 Consent and Approval.** Such Party has sought or obtained, or, in accordance with this Agreement will seek or obtain, each consent, approval, authorization, order, or acceptance by any Governmental Authority in connection with the execution, delivery and performance of this Agreement, and it will provide to any Governmental Authority notice of any actions under this Agreement that are required by Applicable Laws and Regulations.

ARTICLE 29. OPERATING COMMITTEE

29.1 Operating Committee. At least six (6) months prior to the estimated Initial Synchronization Date, Generator and Transmission Provider shall each appoint one representative and one alternate to the Operating Committee who will also be members of the Joint Operating Committee. Each Party shall notify the other party of its appointment in writing. Such appointments may be changed at any time by similar notice. The Operating Committee shall meet as necessary, but not less than once each calendar year, to carry out the duties set forth herein. The Operating Committee shall hold a meeting at the request of either Party, at a time and place agreed upon by the representatives. The Operating Committee shall perform all of its duties consistent with the provisions of this Agreement. Each Party shall cooperate in providing to the Operating Committee all information required in the performance of the Operating Committee's duties. All decisions and agreements, if any, made by the Operating Committee shall be evidenced in writing. The duties of the Operating Committee shall include the following:

- 29.1.1** Establish and maintain control and operating procedures, including those pertaining to information transfers between the Facility and Transmission Provider.
- 29.1.2** Establish data requirements and operating record requirements.
- 29.1.3** Review the requirements, standards, and procedures data acquisition equipment, protective equipment, and any other equipment or software.
- 29.1.4** Annually review of the one (1) year forecast of maintenance and planned outage schedules of Transmission Provider's and Generator's facilities at the Point of Interconnection.
- 29.1.5** Coordinate the scheduling of maintenance and planned outages on the Interconnection Facilities, the Facility and other facilities that impact the normal operation of the interconnection of the Facility to the Transmission System.
- 29.1.6** Ensure that information is being provided by each Party regarding equipment availability.
- 29.1.7** Perform such other duties as may be conferred upon it by mutual agreement of the Parties.

ARTICLE 30. MISCELLANEOUS

- 30.1 Binding Effect.** This Agreement and the rights and obligations hereof, shall be binding upon and shall inure to the benefit of the successors and assigns of the Parties hereto.
- 30.2 Conflicts.** In the event of a conflict between the body of this Agreement and any attachment, appendices or exhibits hereto, the terms and provisions of the body of this Agreement shall prevail and be deemed the final intent of the Parties.
- 30.3 Rules of Interpretation.** This Agreement, unless a clear contrary intention appears, shall be construed and interpreted as follows: (1) the singular number includes the plural number and vice versa; (2) reference to any person includes such person's successors and assigns but, in the case of a Party, only if such successors and assigns are permitted by this Agreement, and reference to a person in a particular capacity excludes such person in any other capacity or individually; (3) reference to any agreement (including this Agreement), document, instrument or tariff means such agreement, document, instrument, or tariff as amended or modified and in effect from time to time in accordance with the terms thereof and, if applicable, the terms hereof; (4) reference to any applicable laws and regulations means such applicable laws and regulations as amended, modified, codified, or reenacted, in whole or in part, and in effect from time to time, including, if applicable, rules and regulations promulgated thereunder; (5) unless expressly stated otherwise, reference to any Article, Section or Appendix means such Article or Section of this Agreement or such Appendix to this Agreement, as the case may be; (6) "hereunder", "hereof", "herein", "hereto" and words of similar import shall be deemed references to this Agreement as a whole and not to any particular Article or other provision hereof or thereof; (7) "including" (and with correlative meaning "include") means including without limiting the generality of any description preceding such term; and (8) relative to the determination of any period of time, "from" means "from and including", "to" means "to but excluding" and "through" means "through and including".
- 30.4 Entire Agreement.** This Agreement, including all Appendices and Schedules attached hereto, constitutes the entire agreement between the Parties with reference to the subject matter hereof, and supersedes all prior and contemporaneous understandings or agreements, oral or written, between the Parties with respect to the subject matter of this Agreement. There are no other agreements, representations, warranties, or covenants which constitute any part of the consideration for, or any condition to, either Party's compliance with its obligations under this Agreement.
- 30.5 No Third Party Beneficiaries.** This Agreement is not intended to and does not create rights, remedies, or benefits of any character whatsoever in favor of any persons, corporations, associations, or entities other than the Parties, and the obligations herein assumed are solely for the use and benefit of the Parties, their successors in interest and, where permitted, their assigns.

30.6 Waiver. The failure of a Party to this Agreement to insist, on any occasion, upon strict performance of any provision of this Agreement will not be considered a waiver of any obligation, right, or duty of, or imposed upon, such Party.

Any waiver at any time by either Party of its rights with respect to this Agreement shall not be deemed a continuing waiver or a waiver with respect to any other failure to comply with any other obligation, right, duty of this Agreement. Termination or Default of this Agreement for any reason by the Generator shall not constitute a waiver of the Generator's legal rights to obtain an interconnection from the Transmission Provider. Any waiver of this Agreement shall, if requested, be provided in writing.

30.7 Headings. The descriptive headings of the various articles of this Agreement have been inserted for convenience of reference only and are of no significance in the interpretation or construction of this Agreement.

30.8 Multiple Counterparts. This Agreement may be executed in two or more counterparts, each of which is deemed an original but all constitute one and the same instrument.

30.9 Amendment. The Parties may by mutual agreement amend this Agreement by a written instrument duly executed by both of the Parties.

30.10 Modification by the Parties. The Parties may by mutual agreement amend the Appendices to this Agreement by a written instrument duly executed by both of the Parties. Such amendment shall become effective and a part of this Agreement upon satisfaction of all Applicable Laws and Regulations.

30.11 Reservation of Rights. Transmission Provider shall have the right to make a unilateral filing with FERC to modify this Agreement with respect to any rates, terms and conditions, charges, classifications of service, rule or regulation under Section 205 or any other applicable provision of the Federal Power Act and FERC's rules and regulations thereunder, and Generator shall have the right to make a unilateral filing with FERC to modify this Agreement pursuant to Section 206 or any other applicable provision of the Federal Power Act and FERC's rules and regulations thereunder; provided that each Party shall have the right to protest any such filing by the other Party and to participate fully in any proceeding before FERC in which such modifications may be considered. Nothing in this Agreement shall limit the rights of the Parties or of FERC under Sections 205 or 206 of the Federal Power Act and FERC's rules and regulations thereunder, except to the extent that the Parties otherwise mutually agree as provided herein.

Notwithstanding any other provision in this Agreement, each Party retains its rights to unilaterally seek modification of this Agreement pursuant to Sections 205 and 206 of the Federal Power Act and pursuant to FERC's rules and regulations promulgated thereunder.

30.12 No Partnership. This Agreement shall not be interpreted or construed to create an association, joint venture, agency relationship, or partnership between the Parties or to impose any partnership obligation or partnership liability upon either Party. Neither Party shall have any right, power or authority to enter into any

agreement or undertaking for, or act on behalf of, or to act as or be an agent or representative of, or to otherwise bind, the other Party.

IN WITNESS WHEREOF, the Parties have executed this Agreement in duplicate originals, each of which shall constitute and be an original effective Agreement between the Parties.

[Insert name of Transmission Provider]

[Insert name of Generator]

By: _____

By: _____

Title: _____

Title: _____

Date: _____

Date: _____

Appendix A

Interconnection Facilities and Network Upgrades

Appendix B

Time Schedule

Appendix C

Interconnection Details

Appendix D

Standard Generator Interconnection Agreement

Appendix E

Security Arrangement Details

Infrastructure security of grid equipment and operations and control hardware and software is essential to ensure day-to-day grid reliability and operational security. The Commission will expect all Transmission Providers, market participants, and generators interconnected to the grid to comply with the recommendations offered by the President's Critical Infrastructure Protection Board and, eventually, best practice recommendations from the electric reliability authority. All public utilities will be expected to meet basic standards for system infrastructure and operational security, including physical, operational, and cyber-security practices.

Appendix F

Commercial Operation Date

This Appendix F is a part of the Generator Interconnection & Operating Agreement between Transmission Provider and [Generator].

[Date]

[Transmission Provider Address]

Re: _____ Generating Facility

Dear _____:

On **[Date]** **[Generator]** has completed Trial Operation of Unit No. _____. This letter confirms that [Generator] commenced commercial operation of Unit No. ____ at the Facility, effective as of **[Date plus one day]**.

Thank you.

[Signature]

[Generator Representative]

Appendix G

Interconnection Guidelines